

1 Braddock J. Huesman
2 T#00047
3 Assistant Attorney General
4 Hon. Juan A. Sablan Memorial Bldg., 2nd Fl.
5 Caller Box 10007, Capital Hill
6 Saipan, MP 96950-8907
7 Telephone: (670) 664-2341
8 Fax: (670) 664-2349

9 Attorney for Defendants Department of Public Safety,
10 Jarrod Manglona, Michael Langdon, and Anthony
11 Macaranas.

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

AE JA ELLIOT PARK,
Plaintiff,
vs.
JARROD MANGLONA, MICHAEL
LANGDON, ANTHONY MACARANAS,
DEPARTMENT OF PUBLIC SAFETY
and JUAN DOES 1-4, NORBERT
DUENAS BABUTA,
Defendants.

CIVIL ACTION NO. 07-0021

**DEFENDANTS' MOTION TO DISMISS
AND INCORPORATED MEMORANDUM
OF POINTS AND AUTHORITIES
[FED. R. CIV. P. 12(b)(1) & (6)]**

Date: March 6, 2008
Time: 9:00 a.m.
Judge: Hon. Alex R. Munson

1 TABLE OF CONTENTS

2	MOTION	1
3	FACTS	1
4	STANDARD OF REVIEW	2
5	OVERVIEW	3
6	ARGUMENT	4
7	Ms. Park's Traffic Case Does Not Entitle Her To Police Protection.	
	Even If It Did, She Received All The Protection She Was Entitled To.....	4
8	Police Protection Cases Do Not Apply	5
9	Even If Police Protection Cases Apply, Ms. Park Received	
10	The Benefit Of Police Protection	8
11	This Court Dismissed Ms. Park's Due Process Claims Previously. Her Inclusion	
12	Of The Same Claims Amounts To A Frivolous Pleading	10
13	Ms. Park Has No Valid Equal Protection or Due Process Claims. Therefore,	
14	Ms. Park Lacks Standing To Bring This Suit	14
15	Without an Underlying 1983 Violation, Plaintiff May Not Allege a 1985	
16	Action on the Same Plead Facts.	15
17	The Facts Alleged Do Not Show a Violation of Constitutional Rights.	
18	Therefore, the DPS Defendants are entitled to Qualified Immunity	16
19	28 U.S.C. 1347(c) Allows Dismissal of Plaintiff's Remaining State Claims.	
20	Therefore, Ms. Park's remaining state claims should be dismissed	
21	without prejudice.....	17
22	CONCLUSION	18
23		
24		
25		
26		
27		
28		

1 TABLE OF AUTHORITIES
2

2	<i>Allen v. Wright</i> , 3 468 U.S. 737, 755 (1984).....	14
4	<i>Associated General Contractors of Cal., Inc. v. Cal. State Council of Carpenters</i> , 5 459 U.S. 519, 526 (1983).....	3
6	<i>Azul-Pacifico, Inc. v. City of Los Angeles</i> , 7 973 F.2d 704, 705 (9th Cir. 1992).....	5
8	<i>Balisteri v. Pacific Police Dept.</i> , 9 901 F.2d 696 (9th Cir. 1990).....	5
10	<i>Bailey v. Forks</i> , 11 688 P.2d 526 (Wash.App. 1984).....	8
12	<i>Barnes v. Black</i> , 13 WL 257105 (W.D. Wis.).....	6, 7
14	<i>Barratt v. Burlingham</i> , 15 492 A.2d 1219 (R.I.1985).....	8
16	<i>Board of Regents v. Roth</i> , 17 408 U.S. 564, 577 (1972).....	12
18	<i>Cahill v. Liberty Mut. Ins. Co.</i> , 19 80 F.3d 336, 337-338 (9th Cir.1996).....	2
20	<i>Cassettari v. Nevada County, Cal.</i> , 21 824 F.2d 735, 739 (9th Cir.1987).....	15
22	<i>Commonwealth v. Bergonia</i> , 23 3 NMI 22 (1992).....	10
24	<i>Colney v. Gibson</i> , 25 355 U.S. 41, 45-46 (1957).....	2
26	<i>Cravens v. City of La Marque, Tex.</i> 27 2006 WL 492805 (S.D. Tex.).....	7
28	<i>Crosby v. Town of Bethlehem</i> , 29 90 A.D.2d 134 (1982).....	8
30	<i>De Nieva v. Reyes</i> , 31 966 F.2d 480 (9th Cir.1992)	13
32	<i>DeShaney v. Winnebago County Dept. of Soc. Serv.'s</i> 33 489 U.S. 189, 195-196, (1989).....	6
34	<i>Doe I v. The Gap, Inc.</i> , 35 WL 1842389 (D.N.Mar. I. 2001).....	3
36	<i>Estate of Macias v. Ihde</i> , 37 219 F.3d 1018 (9th Cir. 2000).....	5

1	<i>Everton v. Willard</i> , 468 So.2d 936 (Fla.1985).....	8
2		
3	<i>Fusilier v. Russell</i> , 345 So.2d 543 (La.Ct.App. 1977).....	8
4		
5	<i>Galbraith v. County of Santa Calara</i> , 307 F.3d 1119, 1126 (9th Cir. 2002).....	16
6		
7	<i>Harris v. Roderick</i> , 126 F.3d 1189 (9th Cir. 1997)	16
8		
9	<i>Hunter v. Bryant</i> , 502 U.S. 224, 227, 112 S.Ct. 534, 116 L.Ed.2d 589 (1991).....	17
10		
11	<i>Ivey v. Bd of Regents of Univ. of Alaska</i> , 673 F.2d 266, 268 (9th Cir. 1982).....	3, 16
12		
13	<i>Leake v. Cain</i> , 720 P.2d 152 (Colo.1986).....	7
14		
15	<i>Lehto v. City of Oxnard</i> , 171 Cal.App.3d 285 (1985).....	7
16		
17	<i>Lindquist v. Moran</i> , 662 P.2d 281 (Mont. 1983).....	8
18		
19	<i>Lockary v. Dayfetz</i> , 587 F.Supp. 631 (N.D. Cal. 1984).....	16
20		
21	<i>Lujan v. Defenders of Wildlife</i> , 504 U.S. 555, 560 (1992).....	14, 15
22		
23	<i>Lunini v. Grayeb</i> , 395 F.3d 761 (7th Cir.2005).....	9
24		
25	<i>McCleskey v. Kemp</i> , 481 U.S. 279 (1987).....	9
26		
27	<i>Miller v. Continental Airlines</i> , 260 F.Supp.2d 931, 935 (N.D. Cal. 2003).....	3
28		
	<i>Mitchell v. Forsyth</i> , 472 U.S. 511, 526, 105 S.Ct. 2806, 86 L.Ed.2d 411 (1985).....	16, 17
	<i>Navarro v. Block</i> , 250 F.3d 729, 732 (9th Cir. 2001).....	5
	<i>Olsen v. Idaho State Bd. of Medicine</i> , 363 F.3d 916, 929 (9th Cir.2004).....	16
	<i>Ricketts v. City of Columbia</i> , 36 F.3d 775 (8th Cir.1994).....	9, 15

1	<i>Richardson v. United States</i> , 841 F.2d 993 (9th Cir. 1988).....	11
2	<i>Roberts v. Corrothers</i> , 812 F.2d 1173, 1177 (9th Cir. 1987)	2
4	<i>Robertson v. Dean Witter Reynolds, Inc.</i> , 749 F.2d 530, 534 (9th Cir. 1984)	3
5	<i>Schutte v. Sitton</i> , 729 S.W.2d 208 (Mo.Ct.App.1987).....	8
7	<i>Seed v. Hudson</i> , No. CIV. A. 93-00081994, WL 229096 (D.N. Mar. I. 1994)	5, 10, 15
8	<i>Siegert v. Gilley</i> , 500 U.S. 226 (1991).....	17
10	<i>Shore v. Town of Stonington</i> , 444 A.2d 1379 (1982).....	7
11	<i>Slaughter-House Cases</i> , 83 U.S. 36, 70 (1876).....	10
13	<i>Town of Castle Rock v. Gonzales</i> , 545 U.S. 748 (2005).....	10, 11, 13, 14, 15
14	<i>United States v. Hays</i> , 515 U.S. 737, 743 (1995).....	14
16	<i>United States v. Lummi Indian Tribe</i> , 235 F.3d 443 (9th Cir. 2000).....	11
17	<i>Woodrum v. Woodward County</i> , 866 F.2d 1121, 1126 (9th Cir. 1989).....	15
19	STATUTES AND REGULATIONS	
21	1 CMC § 2504	13
22	6 CMC § 3202	13
23	NMIAC § 150-10-001	13
24	NMIAC § 150-10-005(a)	13
25	NMIAC § 150-10-010	13
26	NMIAC § 150-10-310	13
27	NMIAC § 150-10-305	14
28		

RULES OF CIVIL PROCEDURE

Fed. R. Civ. Pro. 12(b)(6) 1, 2, 3

1 **MOTION**

2 Defendants Jarrod Manglona (“Defendant Manglona”), Michael Langdon (“Defendant
 3 Langdon”), Anthony Macaranas (“Defendant Macaranas”)(collectively, the “DPS Defendants”),
 4 and the Department of Public Safety (“DPS”) move to dismiss Plaintiff Ae Ja Elliot-Park’s (“Ms.
 5 Park”) Second Amended Complaint in the above entitled action on the grounds that Ms. Park has
 6 failed to state a claim upon which relief can be granted. Defendants submit this motion pursuant
 7 to 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure.
 8

9 **FACTS**

10 On February 12, 2006, Ms. Park proceeded southbound along Highway 16, Papago to
 11 meet her husband for dinner. At or around 6:30 p.m., defendant Norbert Duenas Babauta
 12 (“Babauta”) was proceeding northbound on the same stretch of road. Babauta crossed lanes
 13 during a turn and crashed, head-on, into Ms. Park’s car.
 14

15 Defendant Manglona was the first DPS officer to arrive on the scene. He called in the
 16 traffic accident and requested an ambulance and back up. Defendant Manglona then proceeded to
 17 check on both cars involved in the accident and the passengers therein. Park alleges that
 18 Babauta’s truck was empty except for beer cans and that Babauta was teetering, slurring his
 19 words, smelled strongly of alcohol, and had bloodshot eyes. Ms. Park also alleges, for the first
 20 time, that Defendant Manglona, without reason, committed battery against her.
 21

22 Defendant Manglona then began conducting interviews of witnesses, passengers and
 23 drivers to determine the cause of the accident. Ms. Park stated that Babauta’s truck swerved into
 24 her lane and hit her head-on. It is alleged Babauta stated that he “blacked out” while driving
 25 which caused him to swerve into oncoming traffic. Defendant Magnlona did not administer a field
 26 sobriety test to Babauta. Because of injuries received during the accident, the persons involved in
 27 the accident were transported to the Commonwealth Health Center (“CHC”).
 28

At CHC, Ms. Park and Babauta's son were examined by Dr. Thomas Austin. Ms. Park suffered lacerations on her right leg and right eyelid as well as fractures to her right wrist and leg. Upon observing Babauta, Dr. Austin concluded that Babauta was intoxicated and found an unnamed DPS officer who he informed that he, Dr. Austin, believed that Babauta was intoxicated.

At or around this time, a gentleman named Mr. Mark Williams arrived at CHC in response to hearing that Ms. Park was at the hospital. He allegedly viewed Mr. Babauta passed out on a hospital bed. Mr. Williams approached Defendant Manglona and informed him that Babauta was drunk. Defendant Manglona told both Mr. Williams and Ms. Park that they had confused Babauta with a “good Samaritan.” Babauta did not receive a field sobriety test at CHC, and left the hospital. Babauta was never arrested or charged with Driving While Intoxicated.

STANDARD OF REVIEW

In reviewing a Federal Rule of Civil Procedure 12(b)(6) motion to dismiss, the court must assume the truth of all factual allegations and must construe them in the light most favorable to the non-moving party.¹ Legal conclusions, however, need not be taken as true “merely because they are cast in the form of factual allegations.”²

Dismissal under Federal Rule 12(b)(6) is appropriate when “it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.”³ Dismissal is warranted where the complaint lacks a cognizable legal theory or where the complaint presents a cognizable legal theory yet fails to plead essential facts under that theory.⁴

¹ See *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-338 (9th Cir.1996).

² *Roberts v. Corrothers*, 812 F.2d 1173, 1177 (9th Cir.1987) (quoting *Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981)) (in parenthesis); see also *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55 (9th Cir. 1994).

³ *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001).

⁴ See *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 534 (9th Cir. 1984); *Doe I v. The Gap, Inc.*, No. CV-01-0031, 2001 WL 1842389 *1 (D.N.M. I. Nov. 26, 2001).

1 In spite of the deference the court is bound to pay to the plaintiff's allegations, it is not proper for
 2 the court to assume that "the [plaintiff] can prove facts which [he or she] has not alleged, or that
 3 the defendants have violated the ... laws in ways that have not been alleged."⁵ "[A] liberal
 4 interpretation of a civil rights complaint may not supply essential elements of the claim that were
 5 not initially pled. Vague and conclusory allegations of official participation in civil rights
 6 violations are not sufficient to withstand a motion to dismiss."⁶ While only requiring a short and
 7 plain statement of the claim, FRCP 8(a)(2) is not such a liberal requirement that purely conclusory
 8 statements can survive a motion to dismiss under Rule and 12(b)(6).⁷

OVERVIEW

11 Ms. Park's most recent suit is similar to the one previously dismissed by this court on
 12 November 16, 2007. In between the dismissal and the new filing, Ms. Park has discovered new
 13 and improved facts that, although heretofore unknown, allege a new defendant and new cause of
 14 action. The general narrative, however, remains similar. Ms. Park seeks an entitlement that she
 15 has no legal interest in; the arrest of another individual.

17 Ms. Park was injured in a car accident by a driver she alleges was drunk. Subsequent to
 18 this accident, she alleges that the DPS and the DPS Defendants failed to provide her "police
 19 protection." Ms. Park brings ten causes of action against the various DPS Defendants that
 20 include: violation of equal protection under § 1983; violation of due process under §1983;
 21 violation of equal protection and due process under the NMI Constitution; conspiracy to violate
 22 civil rights under § 1985; conspiracy to obstruct justice under §1985; battery; intentional infliction
 23 of emotional distress; negligent infliction of emotional distress; and negligence. Although when
 24

26 ⁵ *Associated General Contractors of California, Inc. v. California State Council of*
 27 *Carpenters*, 459 U.S. 519, 526 (1983).

28 ⁶ *Ivey v. Bd of Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

28 ⁷ *Miller v. Continental Airlines*, 260 F.Supp.2d 931, 935 (N.D. Cal. 2003).

1 one takes the allegations as true they may indicate a disturbing fact pattern, they fail to rise to the
2 level of constitutional violations and thus fail to state a claim.

3 In the complaint's latest incarnation, Ms. Park's intent is clear; she wishes to receive
4 compensation for the DPS Defendants' failure to arrest an allegedly intoxicated Babauta. This is
5 clear not only from Ms. Park's alleged facts, but from her requested relief. Ms. Park now, as she
6 did before, seeks redress for the DPS Defendants' failure to arrest Babauta. This, of course, is
7 improper. Ms. Park's equal protection claim vis-à-vis police protection is not recognized by
8 courts in a traffic accident setting and, therefore, must be dismissed. Ms. Park's due process
9 claims are frivolous, barred by the U.S. Supreme Court, the law of the case and must be
10 dismissed.
11

12 Moreover, the absence of a section 1983 deprivation of rights precludes a section 1985
13 conspiracy claim predicated on the same allegations; therefore, her conspiracy claims must be
14 dismissed. Further, because Ms. Park's claims are not based on any constitutional deprivation,
15 she lacks standing to bring the instant suit, and as none of her constitutional rights were violated,
16 or clearly established at any time, the DPS Defendants are entitled to qualified immunity.
17

18 Finally, Ms. Park's remaining state claims are frivolous, barred by the public duty doctrine
19 or should be dismissed for failure to state a claim. As Ms. Park, however, has failed to state any
20 federal cause of action, her remaining state law claims should be dismissed without prejudice
21 under 28 U.S.C. § 1367(c).
22

ARGUMENT

I. Ms. Park's Traffic Case Does Not Entitle Her To Police Protection. Even If It Did, She Received All The Protection She Was Entitled To

Federal law requires that “a litigant complaining of a violation of a constitutional right . . . utilize 42 U.S.C. § 1983.”⁸ Section 1983 requires that plaintiff prove that: “(1) a person acting under the color of state law committed the conduct at issue; and (2) the conduct deprived the Plaintiff of some right protected by the Constitution or laws of the United States.”⁹ In this case, Ms. Park alleges that she was deprived her right of “police protection.”

Ms. Park’s newest lawsuit alleges violations of equal protection arising out of the failure of the DPS Defendants to “protect” her by arresting or taking action on Defendant Babauta. This latest theory is fundamentally flawed due to a simple fact: police protection does not include investigation and arrest after a traffic accident. Even if it did, however, Ms. Park’s own pleadings make it clear that she received an investigation, just not an arrest. Again, Ms. Park’s entire claim boils down to an alleged failure to arrest, and this is improper.

A. Police Protection Cases Do Not Apply

In her suit's prior incarnation, Ms. Park argued that the police protection domestic abuse cases, *Estate of Macias v. Ihde*,¹⁰ *Navarro v. Block*,¹¹ and *Balisteri v. Pacific Police Dept.*,¹² established that “[t]here is a constitutional right . . . to have police services administered in a nondiscriminatory manner – a right that is violated when a state actor denies such protection to disfavored persons.”¹³ Quite simply these types of police protection cases do not apply to Ms.

⁸ *Azul-Pacifico, Inc. v. City of Los Angeles*, 973 F.2d 704, 705 (9th Cir. 1992).

⁹ *Seed v. Hudson*, No. CIV. A. 93-00081994, WL 229096 at *6 (D.N. Mar. 1. May 11, 1994) (citing *Leer v. Murphy*, 844 F.2d 628, 632-33 (9th Cir.1988)); see also *Daniels v. Williams*, 474 U.S. 327, 330-31 (1986) (holding that mere negligence cannot form the basis of a Fourteenth Amendment violation actionable under § 1983).

¹⁰ 219 F.3d 1018, 1028 (9th Cir. 2000).

¹¹ 72 F.3d 712, 715-17 (9th Cir. 1996).

¹² 901 F.2d 696, 701 (9th Cir. 1990).

¹³ *Estate of Macias*, 219 F.3d at 1028 (emphasis added).

1 Park's traffic case. This is made clear by *DeShaney v. Winnebago County Dept. of Social.*
2 *Serv's.*¹⁴

DeShaney held that the purpose of the constitution “was to protect the people from the State, not to ensure that the State protected them from each other[.]” Although DeShaney deals with due process, in footnote 3 the Supreme Court recognized that “[t]he State may not, of course, selectively deny its ***protective services*** to certain disfavored minorities without violating the Equal Protection Clause.”¹⁵ Protective services, as this Court noted in its dismissal order, do not apply to cases like Ms. Park’s.

10 Ms. Park's cause of action does not involve police protection. It is a traffic case, and
11
12 similar traffic cases demonstrate that Ms. Park has no claim. For example, in *Barnes v. Black*,¹⁶
13 Black caused a serious traffic accident when he collided into the passenger side of another vehicle
14 in which plaintiff was a passenger. Later, defendants Hamilton and Greagor, police officers,
15 responded to the accident. Although they drafted a traffic report form, defendants did not
16 investigate the accident scene completely, interview the plaintiff, or ticket Black. Plaintiff, much
17 like Ms. Park, brought an equal protection suit against the police officers. In examining the equal
18 protection claim, the court held that:

20 Even if [the Court] were to assume that petitioner had alleged that
21 he was treated differently in some way, it is unclear that petitioner
22 sustained an actual injury as a result of the alleged shortcomings of
23 respondents Hamilton and Greagor. A party must have sustained
24 some sort of injury as a result of the alleged wrongdoing to have
25 standing to bring a claim. *Lujan v. Defenders of Wildlife*,
504 U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992).
From petitioner's alleged facts, it appears that respondent Black has
been held at fault for the accident. It is not clear what additional
advantage petitioner would have gained had respondents Hamilton
and Greagor conducted a more thorough investigation or ticketed
respondent Black. Petitioner's complaint does not make out a claim

¹⁴ 489 U.S. 189 (1989).

¹⁵ See *Walker v. Shepard*, 107 F.Supp.2d at 183.

¹⁶ 2004 WL 257105 (W.D. Wis.).

1 under the equal protection clause or indicate that he would have
 2 standing to bring such a claim. Therefore, he will be denied leave to
 3 proceed on this claim.¹⁷

4 In *Cravens v. City of La Marque, Tex.*,¹⁸ plaintiffs brought suit because a police officer
 5 failed to take Abner Cravens into custody for driving while intoxicated even though the officer,
 6 just like the DPS Defendants, allegedly had probable cause to do so. Plaintiffs' claims, just like
 7 Ms. Park's,¹⁹ rested on the assertion that “[b]ut for [Cravens's] status as an African-American,
 8 Officer Ontiveros would have properly arrested [him] in order to protect him.” The court found
 9 that this claim was unsupported and conclusory.²⁰ The court went on to find that there were no
 10 facts in the complaint to support an equal protection violation and that there were no facts
 11 supporting an inference that the decision not to arrest Cravens was based on race.²¹ Finally, the
 12 court noted that plaintiffs should not use an equal protection argument to circumvent the
 13 *DeShaney* principal that the Constitution doesn't guarantee protection from private actors.²²

14 *Barnes* and *Cravens* are nearly identical to Ms. Park's cause of action, and it is clear that
 15 her equal protection claims, like those in *Barnes* and *Cravens*, should be dismissed. Dismissal is
 16 also compelled when one notices that case law is legion with instances where police officers failed
 17 to arrest drunk individuals. Failing to arrest drunk drivers or failing to investigate, however, does
 18 not result in liability.²³ Even if, however, this Court were to find that “police protection” applies
 19

22 ¹⁷ *Barnes*, 2004 WL 257105 at 2

23 ¹⁸ 2006 WL 492805 (S.D. Tex.)

24 ¹⁹ See Plaintiff's FIRST AMENDED PETITION, ¶ 37.

25 ²⁰ *Barnes*, WL 492805 at 8.

26 ²¹ *Id.*

27 ²² *Id.*

28 ²³ Although CNMI courts have not ruled on the issue, the weight of US authority is that neither a law enforcement officer nor a governmental entity is liable to an individual injured by a drunk driver whom the government failed to restrain or arrest. The DPS Defendants note, however, that these cases are not quite analogous with Ms. Park's case-- the plaintiffs in these cases had the opportunity to argue causation and still lost. See, e.g., *Lehto v. City of Oxnard* 171 Cal.App.3d 285, 289-291, 217 Cal.Rptr. 450 (1985); *Leake v. Cain*, 720 P.2d 152 (Colo.1986); *Shore v. Town of Stonington*, 187 Conn. 147, 444 A.2d 1379

in cases involving traffic accidents, the point is moot because Ms. Park received the benefit of police protection.

B. Even If Police Protection Cases Apply, Ms. Park Received The Benefit Of Police Protection

Throughout her Original, First and Second Amended Complaints, Ms. Park unequivocally demonstrates that she received the benefits of police protection. For example, Ms. Park alleges that Defendant Manglona: (1) alerted DPS Central Command to the accident;²⁴ (2) requested an ambulance;²⁵ (3) checked on both cars;²⁶ and (4) conducted interviews of witnesses, drivers and passengers.²⁷ Further, Ms. Park claims that Defendants Macaranas and Langdon conducted interviews and directed traffic while agents of the CNMI attended to her medical needs.²⁸ Ms. Park was not ignored and Ms. Park was not treated differently than any other accident victim. To be clear, Ms. Park received all the benefits of police protection to which she was entitled. Her current equal protection claim, first styled as the DPS Defendants failure to “take action,” is not that she was denied protection but that she was denied an arrest and prosecution. Put plainly, Ms. Park is angry that Defendant Babuta was not arrested. She has no standing, however, to pursue such a claim.

(1982); *Everton v. Willard*, 468 So.2d 936 (Fla.1985); *Fusilier v. Russell*, 345 So.2d 543 (La.Ct.App.), cert. denied, 347 So.2d 261 (La.1977); *Schutte v. Sitton*, 729 S.W.2d 208 (Mo.Ct.App.1987); *Lindquist v. Moran*, 203 Mont. 268, 662 P.2d 281 (1983); *Crosby v. Town of Bethlehem*, 90 A.D.2d 134, 457 N.Y.S.2d 618 (1982); *Barratt v. Burlingham*, 492 A.2d 1219 (R.I.1985); *Bailey v. Forks*, 38 Wash.App. 656, 688 P.2d 526 (1984).

²⁴ Second Amended Complaint, ¶ 23.

25

Id.

²⁶ *Id.* at 24.

²⁷ *Id.* at 29.

28 *Id.* at 31.

1 For a very long time, courts have consistently expressed an unwillingness to intrude upon
 2 a police officer's discretion to decide when to effectuate an arrest.²⁹ In her Second Amended
 3 Complaint, indeed in all her complaints, Ms. Park conflates "arrest" with "police protection," and
 4 this is improper. For example, in *Lunini v. Grayeb*, the former lover of a city councilman brought
 5 an action against police officers alleging that they violated his equal protection rights by failing to
 6 arrest the councilman for domestic violence. In dismissing the claim the Seventh Circuit Court of
 7 Appeals held that:

8 on this record it appears highly doubtful that any alleged police
 9 misjudgments (if misjudgments there were) took on constitutional
 10 proportions. While we take pains to affirm the baseline principle
 11 that police support and protection must be afforded to all citizens on a
 12 non-discriminatory basis, we decline to take the unprecedented step
 13 of implying a general constitutional police *duty* to arrest certain
 14 individuals during a response to an isolated domestic incident.
 Such a ruling would threaten to turn every police house call
 into a potential federal constitutional lawsuit.³⁰

15 Ms. Park, like the plaintiff in *Lunini*, received the benefits of police protection. In *Lunini*,
 16 the police arrived,³¹ took statements,³² and declined to arrest anyone.³³ Ms. Park has alleged that
 17 the police arrived, took statements, and declined to arrest anyone. The Seventh Circuit declined
 18 to, in its words, "turn every police house call into a potential federal constitutional lawsuit." With
 19 her lawsuit, Ms. Park is asking the same thing, to turn every police traffic incident in the CNMI
 20

21
 22 ²⁹ See, e.g., *Lunini v. Grayeb*, 395 F.3d 761, 770 (7th Cir.2005) (finding that an officer's
 23 failure to arrest an individual involved "an ordinary exercise of police discretion" and thus it was
 24 "not obvious how the police officers' failure to arrest ... implicates [the plaintiff's] rights under the
 25 Equal Protection Clause in the first place"); *Ricketts v. City of Columbia*, 36 F.3d 775, 780 (8th
 26 Cir.1994) (noting that an "officer's discretion to determine when to arrest" is "a fundamental part
 27 of our criminal system"); *see also McCleskey v. Kemp*, 481 U.S. 279, 297, 107 S.Ct. 1756, 95
 28 L.Ed.2d 262 (1987) (noting, as a general matter, that "discretion is essential to the criminal justice
 process").

³⁰ *Lunini*, 395 F.3d at 772 (emphasis in original)(citations omitted).

³¹ *Id.*, at 764.

³² *Id.*, at 764-5.

³³ *Id.*, at 765.

1 into a federal constitutional lawsuit. This Court should decline the invitation.

2 Equal protection cases are founded on the troubled history of this nation. The equal
 3 protection clause in particular and the “Civil War Amendments” in general were designed to end
 4 the caste system designed by states that had been in rebellion.³⁴ The Equal Protection clause
 5 protects people from police action or inaction, but is reserved for serious invasions of individual
 6 rights. Ms. Park utterly fails to plead that she did not receive police protection, and instead
 7 demonstrates that she did not receive the “benefit” of having somebody else arrested. This, of
 8 course, she is not entitled to as demonstrated by legions of case law. Her Equal Protection claims
 9 should be dismissed.

10

11 **II. This Court Dismissed Ms. Park’s Due Process Claims Previously. Her Inclusion
 12 Of The Same Claims Amounts To A Frivolous Pleading.**

13 Ms. Park’s due process claims are identical to the claims previously dismissed by this
 14 Court or rest upon the same legal theory that was previously rejected by this Court. Again, even
 15 assuming that every allegation contained in Plaintiff’s Second Amended Complaint is true, there
 16 can be no cause of action against the DPS Defendants for violations of due process either under
 17 the U.S. or NMI Constitutions.³⁵

18 At the very least, section 1983 demands that Ms. Park plead that the DPS Defendants
 19 deprived her of “some right protected by the Constitution or laws of the United States.”³⁶ When a
 20 State has not explicitly created a “personal entitlement” to some benefit, there is no property
 21 interest and thus no procedural due process violation.³⁷ The legal question, then, is whether Ms.
 22 Park had a recognized property interest in, that is, legal entitlement to, or personal interest in, an

23
 24
 25
 26
 27
 28

³⁴ *Slaughter-House Cases*, 83 U.S. 36, 70 (1876).

³⁵ See *Commonwealth v. Bergonia*, 3 NMI 22 (1992) (“We will apply Article I, § 5 using the same analysis as for the Fourteenth Amendment.”).

³⁶ *Seed*, 1994 WL 229096 at *6 (citing *Leer*, 844 F.2d at 632-33).

³⁷ See *Town of Castle Rock, Colorado v. Gonzales*, 545 U.S. 748 (2005).

1 outcome guaranteed in the Victim's Bill of Rights or the myriad statutes and regulations she cites.
 2 As there is no "precisely defined means of enforcement"³⁸ contained in any statute or regulation
 3 cited by Ms. Park, the Supreme Court in *Castle Rock* and this Court have provided a clear
 4 answer: "no."³⁹

5 As the parties know, in its nine page order dismissing Ms. Park's claims, this Court
 6 dismissed Ms. Park's due process claims on legal grounds rather than the factual grounds. In its
 7 analysis, the Court found that Ms. Park's due process claim regarding the CNMI Victims' Bill of
 8 Rights misconstrued the law.⁴⁰ Ms. Park's new complaint, as it pertains to due process, is nothing
 9 more than an attempt at a "do over" that ignores the "law of the case" doctrine.
 10

11 "Under the 'law of the case' doctrine, a court is ordinarily precluded from reexamining an
 12 issue previously decided by the same court, or a higher court, in the same case."⁴¹ For the law of
 13 the case doctrine to apply, "the issue in question must have been 'decided explicitly or by
 14 necessary implication in [the] previous disposition.'"⁴² Because Ms. Park made the same Due
 15 Process/Victims' Bill of Rights allegations in a consecutive series of pleadings, this Court should
 16

17

 18 ³⁸ Order Granting Defendants' Motion to Dismiss; Civil Action No. 07-00021.

19 ³⁹ *Castle Rock v. Gonzales* bars Ms. Park's claims. In *Castle Rock v. Gonzales*,³⁹ Ms.
 20 Gonzales filed a section 1983 action after her estranged husband abducted and murdered their
 21 three children. Ms. Gonzales possessed a restraining order that included a preprinted "NOTICE
 22 TO LAW ENFORCEMENT OFFICIALS," which ordered the officials in part to "use every
 23 reasonable means to enforce this restraining order." The Court held that Gonzales did not have a
 24 legitimate property interest in the enforcement, and therefore the Town did not violate the Due
 25 Process Clause when police officers failed to enforce the order. Despite the forceful language of
 26 the notice to law enforcement officials, the Court reasoned that the state of Colorado had not
 27 created a clear mandate of police action, noting that it is "**common sense that all police officers
 28 must use some discretion in deciding when and where to enforce city ordinances.**" Consequently,
 29 Gonzales had no constitutionally protected property interest in the enforcement of the restraining
 30 order, and the Town did not violate her procedural due process rights. This Court has come to the same conclusion regarding Ms. Park's claims.

⁴⁰ Order Granting Defendants' Motion to Dismiss; Civil Action No. 07-00021, p. 4.

⁴¹ *Richardson v. United States*, 841 F.2d 993, 996 (9th Cir. 1988) (citations omitted).

⁴² *United States v. Lummi Indian Tribe*, 235 F.3d 443, 452 (9th Cir. 2000).

1 dismiss the claim in accordance with the previous decisions. Ms. Park, however, didn't stop at
 2 the CNMI Victims' Bill of Rights. Ms. Park now claims a constitutionally protected interest in
 3 various CNMI laws and police regulations.

4 Ms. Park claims that she has "a liberty and property interest" in the following statutes and
 5 regulations: 1 CMC § 2504; 6 CMC § 3202; NMIAC § 150-10-710; NMIAC § 150-10-745;
 6 NMIAC § 150-10-760; NMIAC § 150-10-765; NMIAC § 150-10-845; and NMIAC § 150-10-
 7 850; NMIAC § 150-10-850. Ms. Park's claims regarding these statutes and regulations
 8 completely ignore this Court's dismissal order. Just as with the CNMI Victims' Bill of Rights,
 9 Ms. Park has absolutely no "legitimate claim of entitlement to [any property interest]"⁴³ in these
 10 statutes and regulations. Specifically, as this Court held, Ms. Park lacks any "precisely defined
 11 means of enforcement" with these statutes and regulations. This is so because these statutes and
 12 regulations are either organizational, criminal, or employment based.

13 Even if Ms. Park could point to a "precisely defined means of enforcement[,"] and she
 14 cannot, she would not have a property interest because of the nature of the statutes. For example,
 15 1 CMC § 2504 is an organizational statute that describes the duties of the Department of Public
 16 Safety. It is a laundry list of responsibilities and public policy goals the legislature has for the
 17 Department. Ms. Park claims, apparently, that she has a liberty and property interest in this
 18 statute. The statute, however, contains the *responsibilities of the Department* not individual
 19 responsibilities for Defendants Manglona, Langdon, and Macaranas. Ms. Park, however, seeks
 20 relief from *individual defendants* under a statute that does not charge them with any duties. This
 21 is, of course, absurd. To begin with, the duties contained in 1 CMC § 2504 are tasked to the
 22 Department, not individuals in the Department. Therefore, even if this statute provided a
 23
 24
 25
 26
 27

28 ⁴³ *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972).

1 property or liberty interest to Ms. Park, and it doesn't, the action would have to be filed against
 2 the Department, not an individual. Filing against the Department, however, is impossible as it is
 3 not a person for the purpose of a section 1983 suit.⁴⁴ Ms. Park has no property or liberty interest
 4 in 1 CMC § 2504.

5 Ms. Park's attempt to claim a property and liberty interest in 6 CMC § 3202 is even more
 6 frivolous. Title 6, Division 3, Chapter 2 of the Commonwealth Code is entitled "Offenses against
 7 the Commonwealth." 6 CMC § 3202, entitled "Misconduct in Public Office," is a criminal statute
 8 that provides, upon criminal conviction, up to one year in jail and/or a fine of up to \$1000.
 9 Clearly, criminal prosecution is the remedy available in this statute, not a private right of action.
 10 This statute, like all the other statutes Ms. Park cites, does not provide her with a "precisely
 11 defined means of enforcement."

12 The remaining regulations Ms. Park claims to have a liberty or property interest in are all,
 13 without exception, employment rules and regulations of the Department of Public Safety. The
 14 only individuals who have any property interest in these regulations are the employees of the
 15 Department, not general members of the public. This is clear from the fact that the regulations
 16 also contain provisions for: a code of ethics;⁴⁵ the definition of an employee;⁴⁶ an oath of office;⁴⁷
 17 and the manner of dress on duty.⁴⁸ Again, none of the provisions cited in the Second Amended
 18 Complaint contain the requisite enforcement mechanism required by this Court and the U.S.
 19 Supreme Court.⁴⁹ Moreover, if Ms. Park is correct and these regulations do create property and
 20

21
 22
 23
 24
 25 ⁴⁴ *De Nieva v. Reyes*, 966 F.2d 480 (9th Cir.1992)

26 ⁴⁵ NMIAC § 150-10-001

27 ⁴⁶ NMIAC § 150-10-005(a)

28 ⁴⁷ NMIAC § 150-10-010

29 ⁴⁸ NMIAC § 150-10-310

30 ⁴⁹ *See Town of Castle Rock v. Gonzales*, 545 U.S. 748 (2005); Order Granting Defendants'
 31 Motion to Dismiss; Civil Action No. 07-00021.

1 liberty interests for the general public, it is conceivable that this Court will see an surge in due
 2 process claims regarding citizens seeking damages due to officers failing to keep their uniforms
 3 “neat, clean and well pressed[.]”⁵⁰

4

5 **III. Ms. Park Has No Valid Equal Protection or Due Process Claims. Therefore, Ms.**
Park lacks standing to bring this suit.

6 Ms. Park’s suit should be dismissed because she has not suffered “an invasion of a
 7 concrete and particularized legally protected interest.”⁵¹ All Ms. Park has alleged in her suit is a
 8 generalized grievance: the DPS Defendants failed to arrest Babauta. Ms. Park attempts to mask
 9 this request by calling it “police protection,” but as demonstrated in her own pleadings, Ms. Park
 10 received police protection, just not an arrest. Moreover, as demonstrated above, Ms. Park has no
 11 individual interest in the prosecution of another. She has only a general interest, just as much as
 12 any member of the general public, in seeing Babauta arrested. The Supreme Court has repeatedly
 13 refused to recognize a generalized grievance against allegedly illegal government conduct as
 14 sufficient to confer standing.⁵² The Supreme Court requires that even if a government actor
 15 discriminates on the basis of race, the resulting injury “accords a basis for standing only to those
 16 persons who are personally denied equal treatment.”⁵³ Ms. Park hasn’t alleged that she was
 17 denied the protective services of the police regarding accident investigation, witness interviews,
 18 medical attention and emergency services, she has only alleged that Babauta was not arrested. As
 19 discussed above, however, the failure to arrest an individual does not implicate the due process
 20 clause in either a substantive or procedural way.⁵⁴ For these reasons, Ms. Park’s suit should be
 21 dismissed because she has not suffered “an invasion of a concrete and particularized legally
 22

23

24

25

⁵⁰ NMIAC § 150-10-305

⁵¹ *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

⁵² *United States v. Hays*, 515 U.S. 737, 743 (1995).

⁵³ *Allen v. Wright*, 468 U.S. 737, 755 (1984) (internal quotation marks omitted).

⁵⁴ See *Town of Castle Rock*, 545 U.S., at 768.

1 protected interest.”⁵⁵

2 **IV. Without an Underlying §1983 Violation, Plaintiff May Not Allege a §1985 Action**
 3 **on the Same Pled Facts.**

4 As demonstrated above, police protection cases don’t extend to Ms. Park’s claims.

5 Even if they did however, she received all the police protection to which she was entitled.

6 Further, Ms. Park has no right to have anyone arrested, or to have the police take action⁵⁶ as

7 this is a purely discretionary act.⁵⁷ Ms. Park has failed to state an equal protection claim and

8 she has failed to state, either procedurally or substantively, a due process claim. The

9 absence of a section 1983 deprivation of rights precludes a section 1985 conspiracy claim

10 predicated on the same allegations.⁵⁸ The Ninth Circuit precludes plaintiffs from bringing

11 conspiracy claims for violating equal protection and due process when there is no underlying

12 violation of equal protection and due process.⁵⁹ As demonstrated above, Ms. Park cannot

13 show that the DPS Defendants’ acts “deprived [her] of some right protected by the

14 Constitution or laws of the United States.”⁶⁰ Further, even if the Ninth Circuit allowed Ms.

15 Park to state a claim for conspiracy, and it does not, she has failed to do so.

16 When pleading a conspiracy a “plaintiff must make some showing of an agreement or
 17 a meeting of the minds on the part of defendants to violate his constitutional rights.”⁶¹

18 Conspiracy allegations must be supported by material facts and not merely conclusory

22 ⁵⁵ *Lujan v. Defenders of Wildlife*, 504 U.S. at 560.

23 ⁵⁶ *See Town of Castle Rock*, 545 U.S., at 768.

24 ⁵⁷ *Ricketts*, 36 F.3d at 780 (noting that an “officer’s discretion to determine when to arrest” is
 25 “a fundamental part of our criminal system”)

26 ⁵⁸ *Cassettari v. Nevada County, Cal.*, 824 F.2d 735, 739 (9th Cir.1987) (citing *Dooley v.*
 27 *Reiss*, 736 F.2d 1392, 1395 (9th Cir.), cert. denied, 469 U.S. 1038, 105 S.Ct. 518, 83 L.Ed.2d
 407 (1984)).

28 ⁵⁹ *See, e.g., Id.*

29 ⁶⁰ *Seed*, 1994 WL 229096 at *6 (citing *Leer*, 844 F.2d at 632-33).

30 ⁶¹ *Woodrum v. Woodward County*, 866 F.2d 1121, 1126 (9th Cir. 19889) (citing *Fonda v.*
 31 *Gray*, 707 F.2d 435 (9th Cir. 1983))

1 statements.⁶² “Vague and conclusory allegations are not sufficient to support a claim for
 2 civil rights violations based on conspiracy.”⁶³ This heightened pleading standard no longer
 3 applies to civil rights actions in general,⁶⁴ but it does still apply to conspiracy claims.⁶⁵

4 The heightened pleading standard requires that a conspiracy claim must be pled with
 5 particularity as to which defendants conspired, how they conspired and how the conspiracy
 6 led to a deprivation of plaintiff’s constitutional rights.⁶⁶ Ms. Park’s pleadings fail to meet
 7 this standard. All Ms. Park has pled are conclusory facts. For example, Ms. Park alleges
 8 that: the DPS Defendants formed a conspiracy;⁶⁷ all defendants conspired to destroy
 9 evidence;⁶⁸ and obstruct justice.⁶⁹ These are all conclusory allegations which assume the
 10 ultimate issue. Further, Ms. Park has only made a conclusory allegation that the alleged acts
 11 were race related but provides no facts. Moreover, since she has no personal right to see
 12 anyone prosecuted, she was no more injured by this “obstruction of justice” than any other
 13 individual on Saipan.

14 **V. The Facts Alleged Do Not Show a Violation of Constitutional Rights. Therefore,
 15 the DPS Defendants are entitled to Qualified Immunity**

16 Qualified immunity is “an entitlement not to stand trial or face the other burdens of
 17 litigation.”⁷⁰ The privilege is “an *immunity from suit* rather than a mere defense to liability;
 18 and like an absolute immunity, it is effectively lost if a case is erroneously permitted to go to
 19 trial.” As a result, “[the U.S. Supreme Court has] repeatedly . . . stressed the importance of
 20

21 ⁶² *Lockary v. Dayfetz*, 587 F.Supp. 631 (N.D. Cal. 1984).

22 ⁶³ *Ivey*, 673 F.2d at 268.

23 ⁶⁴ *see Galbraith v. County of Santa Calara*, 307 F.3d 1119, 1126 (9th Cir. 2002)

24 ⁶⁵ *Olsen v. Idaho State Bd. of Medicine*, 363 F.3d 916, 929 (9th Cir.2004).

25 ⁶⁶ *See Harris v. Roderick*, 126 F.3d 1189, 1196 (9th Cir. 1997).

26 ⁶⁷ *See Second Amended Petition*, ¶ 46.

27 ⁶⁸ *See Second Amended Petition*, ¶ 61.

28 ⁶⁹ *See Second Amended Petition*, ¶ 61.

29 ⁷⁰ *Mitchell v. Forsyth*, 472 U.S. 511, 526, 105 S.Ct. 2806, 86 L.Ed.2d 411 (1985).

1 resolving immunity questions at the earliest possible stage in litigation.”⁷¹ The Supreme
 2 Court has held that the denial of a claim of qualified immunity is immediately appealable
 3 under the collateral order doctrine.⁷²

4 A court asked to rule on qualified immunity must consider this threshold question:
 5 “Taken in the light most favorable to the party asserting the injury, do the facts alleged show
 6 the officer's conduct violated a constitutional right?”⁷³ As demonstrated frequently in earlier
 7 sections of the brief, Ms. Park has failed to allege she was denied equal protection of any
 8 right protected by the U.S. Constitution, and the U.S. Supreme Court has concluded that
 9 individuals have no protected interest in having a third party arrested. Therefore, as the
 10 Plaintiff's own alleged facts fail to show the DPS Defendants violated any of Ms. Park's
 11 constitutional rights, the DPS Defendants are immune and the suit must be dismissed.
 12

13

14 **VI. 28 U.S.C. 1347(c) Allows Dismissal of Plaintiff's Remaining State Claims.
 15 Therefore, Ms. Park's remaining state claims should be dismissed without
 16 prejudice.**

17 Ms. Park's state law claims should be dismissed outright as they are alleged
 18 constitutional violations, which fail to state a claim, or they are negligence actions which are
 19 barred by the public duty doctrine. 28 U.S.C. § 1367(c), however, provides that district
 20 courts may decline to exercise supplemental jurisdiction if “(1) the claim raises a novel or
 21 complex issue of State law, (2) the claim substantially predominates over the claim or claims
 22 over which the district court has original jurisdiction, (3) the district court has dismissed all
 23 claims over which it has original jurisdiction, or (4) in exceptional circumstances, there are
 24 other compelling reasons for declining jurisdiction.” In the absence of federal question or
 25

26

⁷¹ *Hunter v. Bryant*, 502 U.S. 224, 227, 112 S.Ct. 534, 116 L.Ed.2d 589 (1991) (*per curiam*).

27 ⁷² *Mitchell*, 472 U.S. at 526.

28 ⁷³ *Siegert v. Gilley*, 500 U.S. 226, 232, 111 S.Ct. 1789, 114 L.Ed.2d 277 (1991).

1 diversity jurisdiction, it is within the Court's discretion to decline to exercise supplemental
2 jurisdiction and to dismiss Ms. Park's remaining claims based upon local law without
3 prejudice pursuant to 28 U.S.C. § 1337(c).⁷⁴ As discussed above, Ms. Park's claims express
4 her disappointment and unhappiness that DPS officers failed to arrest a drunk driver. Ms.
5 Park's disappointment, however, does not constitute a section 1983 action. Even if this
6 Court were to find that there is any question that Ms. Park has any valid local law claims,
7 these claims would involve novel questions of local law. Accordingly, the first three, if not
8 all four factors contained in the statute would militate in favor of dismissing Ms. Park's local
9 law claims without prejudice. This would allow these local law questions, which
10 predominate, to be decided in the first instance by the local courts.
11
12

CONCLUSION

14 WHEREFORE, based upon the foregoing, this honorable Court should grant, in whole or
15 in part, DPS Defendants' Motion to Dismiss and that they be awarded attorneys' fees.
16
17
18
19
20
21
22
23
24
25
26
27

⁷⁴ See *Dyack v. Northern Mariana Islands*, 317 F.3d 1030, 1037-38 (9th Cir. 2003); *Bryan v. Adventist Health Sys./West*, 289 F.3d 1162, 1169 (9th Cir. 2002).

Respectfully submitted
Thursday, January 31, 2008
OFFICE OF THE ATTORNEY GENERAL

/S/

CERTIFICATE OF SERVICE

I certify that a copy of Defendants' Motion to Dismiss was served on George Hasselback, who is the attorney in charge for plaintiff, Ms. Park, and whose address is PO Box 501969, Saipan, MP 96950, (670) 234-5684, by electronic filing on Thursday, January 31, 2008.

/s/ _____

1 Braddock J. Huesman
 2 T#00047
 3 Assistant Attorney General
 4 Hon. Juan A. Sablan Memorial Bldg., 2nd Fl.
 5 Caller Box 10007, Capital Hill
 6 Saipan, MP 96950-8907
 7 Telephone: (670) 664-2341
 8 Fax: (670) 664-2349

9 Attorney for Defendants Department of Public Safety,
 10 Jarrod Manglona, Michael Langdon, and Anthony
 11 Macaranas.

12
 13
 14
 15 IN THE UNITED STATES DISTRICT COURT
 16 FOR THE NORTHERN MARIANA ISLANDS
 17
 18

19 AE JA ELLIOT PARK,

20 Plaintiff,

21 vs.

22 JARROD MANGLONA, MICHAEL
 23 LANGDON, ANTHONY MACARANAS,
 24 DEPARTMENT OF PUBLIC SAFETY
 25 and JUAN DOES 1-4, NORBERT
 26 DUENAS BABUTA,

27 Defendants.

28 CIVIL ACTION NO. 07-0021

29
 30
 31
 32
 33
 34
 35
 36
 37
 38
 39
 40
 41
 42
 43
 44
 45
 46
 47
 48
 49
 50
 51
 52
 53
 54
 55
 56
 57
 58
 59
 60
 61
 62
 63
 64
 65
 66
 67
 68
 69
 70
 71
 72
 73
 74
 75
 76
 77
 78
 79
 80
 81
 82
 83
 84
 85
 86
 87
 88
 89
 90
 91
 92
 93
 94
 95
 96
 97
 98
 99
 100
 101
 102
 103
 104
 105
 106
 107
 108
 109
 110
 111
 112
 113
 114
 115
 116
 117
 118
 119
 120
 121
 122
 123
 124
 125
 126
 127
 128
 129
 130
 131
 132
 133
 134
 135
 136
 137
 138
 139
 140
 141
 142
 143
 144
 145
 146
 147
 148
 149
 150
 151
 152
 153
 154
 155
 156
 157
 158
 159
 160
 161
 162
 163
 164
 165
 166
 167
 168
 169
 170
 171
 172
 173
 174
 175
 176
 177
 178
 179
 180
 181
 182
 183
 184
 185
 186
 187
 188
 189
 190
 191
 192
 193
 194
 195
 196
 197
 198
 199
 200
 201
 202
 203
 204
 205
 206
 207
 208
 209
 210
 211
 212
 213
 214
 215
 216
 217
 218
 219
 220
 221
 222
 223
 224
 225
 226
 227
 228
 229
 230
 231
 232
 233
 234
 235
 236
 237
 238
 239
 240
 241
 242
 243
 244
 245
 246
 247
 248
 249
 250
 251
 252
 253
 254
 255
 256
 257
 258
 259
 260
 261
 262
 263
 264
 265
 266
 267
 268
 269
 270
 271
 272
 273
 274
 275
 276
 277
 278
 279
 280
 281
 282
 283
 284
 285
 286
 287
 288
 289
 290
 291
 292
 293
 294
 295
 296
 297
 298
 299
 300
 301
 302
 303
 304
 305
 306
 307
 308
 309
 310
 311
 312
 313
 314
 315
 316
 317
 318
 319
 320
 321
 322
 323
 324
 325
 326
 327
 328
 329
 330
 331
 332
 333
 334
 335
 336
 337
 338
 339
 340
 341
 342
 343
 344
 345
 346
 347
 348
 349
 350
 351
 352
 353
 354
 355
 356
 357
 358
 359
 360
 361
 362
 363
 364
 365
 366
 367
 368
 369
 370
 371
 372
 373
 374
 375
 376
 377
 378
 379
 380
 381
 382
 383
 384
 385
 386
 387
 388
 389
 390
 391
 392
 393
 394
 395
 396
 397
 398
 399
 400
 401
 402
 403
 404
 405
 406
 407
 408
 409
 410
 411
 412
 413
 414
 415
 416
 417
 418
 419
 420
 421
 422
 423
 424
 425
 426
 427
 428
 429
 430
 431
 432
 433
 434
 435
 436
 437
 438
 439
 440
 441
 442
 443
 444
 445
 446
 447
 448
 449
 450
 451
 452
 453
 454
 455
 456
 457
 458
 459
 460
 461
 462
 463
 464
 465
 466
 467
 468
 469
 470
 471
 472
 473
 474
 475
 476
 477
 478
 479
 480
 481
 482
 483
 484
 485
 486
 487
 488
 489
 490
 491
 492
 493
 494
 495
 496
 497
 498
 499
 500
 501
 502
 503
 504
 505
 506
 507
 508
 509
 510
 511
 512
 513
 514
 515
 516
 517
 518
 519
 520
 521
 522
 523
 524
 525
 526
 527
 528
 529
 530
 531
 532
 533
 534
 535
 536
 537
 538
 539
 540
 541
 542
 543
 544
 545
 546
 547
 548
 549
 550
 551
 552
 553
 554
 555
 556
 557
 558
 559
 560
 561
 562
 563
 564
 565
 566
 567
 568
 569
 570
 571
 572
 573
 574
 575
 576
 577
 578
 579
 580
 581
 582
 583
 584
 585
 586
 587
 588
 589
 590
 591
 592
 593
 594
 595
 596
 597
 598
 599
 600
 601
 602
 603
 604
 605
 606
 607
 608
 609
 610
 611
 612
 613
 614
 615
 616
 617
 618
 619
 620
 621
 622
 623
 624
 625
 626
 627
 628
 629
 630
 631
 632
 633
 634
 635
 636
 637
 638
 639
 640
 641
 642
 643
 644
 645
 646
 647
 648
 649
 650
 651
 652
 653
 654
 655
 656
 657
 658
 659
 660
 661
 662
 663
 664
 665
 666
 667
 668
 669
 670
 671
 672
 673
 674
 675
 676
 677
 678
 679
 680
 681
 682
 683
 684
 685
 686
 687
 688
 689
 690
 691
 692
 693
 694
 695
 696
 697
 698
 699
 700
 701
 702
 703
 704
 705
 706
 707
 708
 709
 710
 711
 712
 713
 714
 715
 716
 717
 718
 719
 720
 721
 722
 723
 724
 725
 726
 727
 728
 729
 730
 731
 732
 733
 734
 735
 736
 737
 738
 739
 740
 741
 742
 743
 744
 745
 746
 747
 748
 749
 750
 751
 752
 753
 754
 755
 756
 757
 758
 759
 760
 761
 762
 763
 764
 765
 766
 767
 768
 769
 770
 771
 772
 773
 774
 775
 776
 777
 778
 779
 780
 781
 782
 783
 784
 785
 786
 787
 788
 789
 790
 791
 792
 793
 794
 795
 796
 797
 798
 799
 800
 801
 802
 803
 804
 805
 806
 807
 808
 809
 810
 811
 812
 813
 814
 815
 816
 817
 818
 819
 820
 821
 822
 823
 824
 825
 826
 827
 828
 829
 830
 831
 832
 833
 834
 835
 836
 837
 838
 839
 840
 841
 842
 843
 844
 845
 846
 847
 848
 849
 850
 851
 852
 853
 854
 855
 856
 857
 858
 859
 860
 861
 862
 863
 864
 865
 866
 867
 868
 869
 870
 871
 872
 873
 874
 875
 876
 877
 878
 879
 880
 881
 882
 883
 884
 885
 886
 887
 888
 889
 890
 891
 892
 893
 894
 895
 896
 897
 898
 899
 900
 901
 902
 903
 904
 905
 906
 907
 908
 909
 910
 911
 912
 913
 914
 915
 916
 917
 918
 919
 920
 921
 922
 923
 924
 925
 926
 927
 928
 929
 930
 931
 932
 933
 934
 935
 936
 937
 938
 939
 940
 941
 942
 943
 944
 945
 946
 947
 948
 949
 950
 951
 952
 953
 954
 955
 956
 957
 958
 959
 960
 961
 962
 963
 964
 965
 966
 967
 968
 969
 970
 971
 972
 973
 974
 975
 976
 977
 978
 979
 980
 981
 982
 983
 984
 985
 986
 987
 988
 989
 990
 991
 992
 993
 994
 995
 996
 997
 998
 999
 1000
 1001
 1002
 1003
 1004
 1005
 1006
 1007
 1008
 1009
 1010
 1011
 1012
 1013
 1014
 1015
 1016
 1017
 1018
 1019
 1020
 1021
 1022
 1023
 1024
 1025
 1026
 1027
 1028
 1029
 1030
 1031
 1032
 1033
 1034
 1035
 1036
 1037
 1038
 1039
 1040
 1041
 1042
 1043
 1044
 1045
 1046
 1047
 1048
 1049
 1050
 1051
 1052
 1053
 1054
 1055
 1056
 1057
 1058
 1059
 1060
 1061
 1062
 1063
 1064
 1065
 1066
 1067
 1068
 1069
 1070
 1071
 1072
 1073
 1074
 1075
 1076
 1077
 1078
 1079
 1080
 1081
 1082
 1083
 1084
 1085
 1086
 1087
 1088
 1089
 1090
 1091
 1092
 1093
 1094
 1095
 1096
 1097
 1098
 1099
 1100
 1101
 1102
 1103
 1104
 1105
 1106
 1107
 1108
 1109
 1110
 1111
 1112
 1113
 1114
 1115
 1116
 1117
 1118
 1119
 1120
 1121
 1122
 1123
 1124
 1125
 1126
 1127
 1128
 1129
 1130
 1131
 1132
 1133
 1134
 1135
 1136
 1137
 1138
 1139
 1140
 1141
 1142
 1143
 1144
 1145
 1146
 1147
 1148
 1149
 1150
 1151
 1152
 1153
 1154
 1155
 1156
 1157
 1158
 1159
 1160
 1161
 1162
 1163
 1164
 1165
 1166
 1167
 1168
 1169
 1170
 1171
 1172
 1173
 1174
 1175
 1176
 1177
 1178
 1179
 1180
 1181
 1182
 1183
 1184
 1185
 1186
 1187
 1188
 1189
 1190
 1191
 1192
 1193
 1194
 1195
 1196
 1197
 1198
 1199
 1200
 1201
 1202
 1203
 1204
 1205
 1206
 1207
 1208
 1209
 1210
 1211
 1212
 1213
 1214
 1215
 1216
 1217
 1218
 1219
 1220
 1221
 1222
 1223
 1224
 1225
 1226
 1227
 1228
 1229
 1230
 1231
 1232
 1233
 1234
 1235
 1236
 1237
 1238
 1239
 1240
 1241
 1242
 1243
 1244
 1245
 1246
 1247
 1248
 1249
 1250
 1251
 1252
 1253
 1254
 1255
 1256
 1257
 1258
 1259
 1260
 1261
 1262
 1263
 1264
 1265
 1266
 1267
 1268
 1269
 1270
 1271
 1272
 1273
 1274
 1275
 1276
 1277
 1278
 1279
 1280
 1281
 1282
 1283
 1284
 1285
 1286
 1287
 1288
 1289
 1290
 1291
 1292
 1293
 1294
 1295
 1296
 1297
 1298
 1299
 1300
 1301
 1302
 1303
 1304
 1305
 1306
 1307
 1308
 1309
 1310
 1311
 1312
 1313
 1314
 1315
 1316
 1317
 1318
 1319
 1320
 1321
 1322
 1323
 1324
 1325
 1326
 1327
 1328
 1329
 1330
 1331
 1332
 1333
 1334
 1335
 1336
 1337
 1338
 1339
 1340
 1341
 1342
 1343
 1344
 1345
 1346
 1347
 1348
 1349
 1350
 1351
 1352
 1353
 1354
 1355
 1356
 1357
 1358
 1359
 1360
 1361
 1362
 1363
 1364
 1365
 1366
 1367
 1368
 1369
 1370
 1371
 1372
 1373
 1374
 1375
 1376
 1377
 1378
 1379
 1380
 1381
 1382
 1383
 1384
 1385
 1386
 1387
 1388
 1389
 1390
 1391
 1392
 1393
 1394
 1395
 1396
 1397
 1398
 1399
 1400
 1401
 1402
 1403
 1404
 1405
 1406
 1407
 1408
 1409
 1410
 1411
 1412
 1413
 1414
 1415
 1416
 1417
 1418
 1419
 1420
 1421
 1422
 1423
 1424
 1425
 1426
 1427
 1428
 1429
 1430
 1431
 1432
 1433
 1434
 1435
 1436
 1437
 1438
 1439
 1440
 1441
 1442
 1443
 1444
 1445
 1446
 1447
 1448
 1449
 1450
 1451
 1452
 1453
 1454
 1455
 1456
 1457
 1458
 1459
 1460
 1461
 1462
 1463
 1464
 1465
 1466
 1467
 1468
 1469
 1470
 1471
 1472
 1473
 1474
 1475
 1476
 1477
 1478
 1479
 1480
 1481
 1482
 1483
 1484
 1485
 1486
 1487
 1488
 1489
 1490
 1491<br

1 TABLE OF CONTENTS

2	MOTION	1
3	FACTS	1
4	STANDARD OF REVIEW	2
5	OVERVIEW	3
6	ARGUMENT	4
7	Ms. Park's Traffic Case Does Not Entitle Her To Police Protection.	
	Even If It Did, She Received All The Protection She Was Entitled To.....	4
8	Police Protection Cases Do Not Apply	5
9	Even If Police Protection Cases Apply, Ms. Park Received	
10	The Benefit Of Police Protection	8
11	This Court Dismissed Ms. Park's Due Process Claims Previously. Her Inclusion	
12	Of The Same Claims Amounts To A Frivolous Pleading	10
13	Ms. Park Has No Valid Equal Protection or Due Process Claims. Therefore,	
14	Ms. Park Lacks Standing To Bring This Suit	14
15	Without an Underlying 1983 Violation, Plaintiff May Not Allege a 1985	
16	Action on the Same Plead Facts.	15
17	The Facts Alleged Do Not Show a Violation of Constitutional Rights.	
18	Therefore, the DPS Defendants are entitled to Qualified Immunity	16
19	28 U.S.C. 1347(c) Allows Dismissal of Plaintiff's Remaining State Claims.	
20	Therefore, Ms. Park's remaining state claims should be dismissed	
21	without prejudice.....	17
22	CONCLUSION	18
23		
24		
25		
26		
27		
28		

1 TABLE OF AUTHORITIES
2

2	<i>Allen v. Wright</i> , 3 468 U.S. 737, 755 (1984).....	14
4	<i>Associated General Contractors of Cal., Inc. v. Cal. State Council of Carpenters</i> , 5 459 U.S. 519, 526 (1983).....	3
6	<i>Azul-Pacifico, Inc. v. City of Los Angeles</i> , 7 973 F.2d 704, 705 (9th Cir. 1992).....	5
8	<i>Balisteri v. Pacific Police Dept.</i> , 9 901 F.2d 696 (9th Cir. 1990).....	5
10	<i>Bailey v. Forks</i> , 11 688 P.2d 526 (Wash.App. 1984).....	8
12	<i>Barnes v. Black</i> , 13 WL 257105 (W.D. Wis.).....	6, 7
14	<i>Barratt v. Burlingham</i> , 15 492 A.2d 1219 (R.I.1985).....	8
16	<i>Board of Regents v. Roth</i> , 17 408 U.S. 564, 577 (1972).....	12
18	<i>Cahill v. Liberty Mut. Ins. Co.</i> , 19 80 F.3d 336, 337-338 (9th Cir.1996).....	2
20	<i>Cassettari v. Nevada County, Cal.</i> , 21 824 F.2d 735, 739 (9th Cir.1987).....	15
22	<i>Commonwealth v. Bergonia</i> , 23 3 NMI 22 (1992).....	10
24	<i>Colney v. Gibson</i> , 25 355 U.S. 41, 45-46 (1957).....	2
26	<i>Cravens v. City of La Marque, Tex.</i> 27 2006 WL 492805 (S.D. Tex.).....	7
28	<i>Crosby v. Town of Bethlehem</i> , 29 90 A.D.2d 134 (1982).....	8
30	<i>De Nieva v. Reyes</i> , 31 966 F.2d 480 (9th Cir.1992)	13
32	<i>DeShaney v. Winnebago County Dept. of Soc. Serv.'s</i> 33 489 U.S. 189, 195-196, (1989).....	6
34	<i>Doe I v. The Gap, Inc.</i> , 35 WL 1842389 (D.N.Mar. I. 2001).....	3
36	<i>Estate of Macias v. Ihde</i> , 37 219 F.3d 1018 (9th Cir. 2000).....	5

1	<i>Everton v. Willard</i> , 468 So.2d 936 (Fla.1985).....	8
2		
3	<i>Fusilier v. Russell</i> , 345 So.2d 543 (La.Ct.App. 1977).....	8
4		
5	<i>Galbraith v. County of Santa Calara</i> , 307 F.3d 1119, 1126 (9th Cir. 2002).....	16
6		
7	<i>Harris v. Roderick</i> , 126 F.3d 1189 (9th Cir. 1997)	16
8		
9	<i>Hunter v. Bryant</i> , 502 U.S. 224, 227, 112 S.Ct. 534, 116 L.Ed.2d 589 (1991).....	17
10		
11	<i>Ivey v. Bd of Regents of Univ. of Alaska</i> , 673 F.2d 266, 268 (9th Cir. 1982).....	3, 16
12		
13	<i>Leake v. Cain</i> , 720 P.2d 152 (Colo.1986).....	7
14		
15	<i>Lehto v. City of Oxnard</i> , 171 Cal.App.3d 285 (1985).....	7
16		
17	<i>Lindquist v. Moran</i> , 662 P.2d 281 (Mont. 1983).....	8
18		
19	<i>Lockary v. Dayfetz</i> , 587 F.Supp. 631 (N.D. Cal. 1984).....	16
20		
21	<i>Lujan v. Defenders of Wildlife</i> , 504 U.S. 555, 560 (1992).....	14, 15
22		
23	<i>Lunini v. Grayeb</i> , 395 F.3d 761 (7th Cir.2005).....	9
24		
25	<i>McCleskey v. Kemp</i> , 481 U.S. 279 (1987).....	9
26		
27	<i>Miller v. Continental Airlines</i> , 260 F.Supp.2d 931, 935 (N.D. Cal. 2003).....	3
28		
	<i>Mitchell v. Forsyth</i> , 472 U.S. 511, 526, 105 S.Ct. 2806, 86 L.Ed.2d 411 (1985).....	16, 17
	<i>Navarro v. Block</i> , 250 F.3d 729, 732 (9th Cir. 2001).....	5
	<i>Olsen v. Idaho State Bd. of Medicine</i> , 363 F.3d 916, 929 (9th Cir.2004).....	16
	<i>Ricketts v. City of Columbia</i> , 36 F.3d 775 (8th Cir.1994).....	9, 15

1	<i>Richardson v. United States</i> , 841 F.2d 993 (9th Cir. 1988).....	11
2	<i>Roberts v. Corrothers</i> , 812 F.2d 1173, 1177 (9th Cir. 1987)	2
4	<i>Robertson v. Dean Witter Reynolds, Inc.</i> , 749 F.2d 530, 534 (9th Cir. 1984)	3
5	<i>Schutte v. Sitton</i> , 729 S.W.2d 208 (Mo.Ct.App.1987).....	8
7	<i>Seed v. Hudson</i> , No. CIV. A. 93-00081994, WL 229096 (D.N. Mar. I. 1994)	5, 10, 15
8	<i>Siegert v. Gilley</i> , 500 U.S. 226 (1991).....	17
10	<i>Shore v. Town of Stonington</i> , 444 A.2d 1379 (1982).....	7
11	<i>Slaughter-House Cases</i> , 83 U.S. 36, 70 (1876).....	10
13	<i>Town of Castle Rock v. Gonzales</i> , 545 U.S. 748 (2005).....	10, 11, 13, 14, 15
14	<i>United States v. Hays</i> , 515 U.S. 737, 743 (1995).....	14
16	<i>United States v. Lummi Indian Tribe</i> , 235 F.3d 443 (9th Cir. 2000).....	11
17	<i>Woodrum v. Woodward County</i> , 866 F.2d 1121, 1126 (9th Cir. 1989).....	15
19	STATUTES AND REGULATIONS	
21	1 CMC § 2504	13
22	6 CMC § 3202	13
23	NMIAC § 150-10-001	13
24	NMIAC § 150-10-005(a)	13
25	NMIAC § 150-10-010	13
26	NMIAC § 150-10-310	13
27	NMIAC § 150-10-305	14
28		

RULES OF CIVIL PROCEDURE

Fed. R. Civ. Pro. 12(b)(6) 1, 2, 3

MOTION

Defendants Jarrod Manglona (“Defendant Manglona”), Michael Langdon (“Defendant Langdon”), Anthony Macaranas (“Defendant Macaranas”)(collectively, the “DPS Defendants”), and the Department of Public Safety (“DPS”) move to dismiss Plaintiff Ae Ja Elliot-Park’s (“Ms. Park”) Second Amended Complaint in the above entitled action on the grounds that Ms. Park has failed to state a claim upon which relief can be granted. Defendants submit this motion pursuant to 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure.

FACTS

On February 12, 2006, Ms. Park proceeded southbound along Highway 16, Papago to meet her husband for dinner. At or around 6:30 p.m., defendant Norbert Duenas Babauta (“Babauta”) was proceeding northbound on the same stretch of road. Babauta crossed lanes during a turn and crashed, head-on, into Ms. Park’s car.

Defendant Manglona was the first DPS officer to arrive on the scene. He called in the traffic accident and requested an ambulance and back up. Defendant Manglona then proceeded to check on both cars involved in the accident and the passengers therein. Park alleges that Babauta's truck was empty except for beer cans and that Babauta was teetering, slurring his words, smelled strongly of alcohol, and had bloodshot eyes. Ms. Park also alleges, for the first time, that Defendant Manglona, without reason, committed battery against her.

Defendant Manglona then began conducting interviews of witnesses, passengers and drivers to determine the cause of the accident. Ms. Park stated that Babauta's truck swerved into her lane and hit her head-on. It is alleged Babauta stated that he "blacked out" while driving which caused him to swerve into oncoming traffic. Defendant Magnlona did not administer a field sobriety test to Babauta. Because of injuries received during the accident, the persons involved in the accident were transported to the Commonwealth Health Center ("CHC").

At CHC, Ms. Park and Babauta's son were examined by Dr. Thomas Austin. Ms. Park suffered lacerations on her right leg and right eyelid as well as fractures to her right wrist and leg. Upon observing Babauta, Dr. Austin concluded that Babauta was intoxicated and found an unnamed DPS officer who he informed that he, Dr. Austin, believed that Babauta was intoxicated.

At or around this time, a gentleman named Mr. Mark Williams arrived at CHC in response to hearing that Ms. Park was at the hospital. He allegedly viewed Mr. Babauta passed out on a hospital bed. Mr. Williams approached Defendant Manglona and informed him that Babauta was drunk. Defendant Manglona told both Mr. Williams and Ms. Park that they had confused Babauta with a “good Samaritan.” Babauta did not receive a field sobriety test at CHC, and left the hospital. Babauta was never arrested or charged with Driving While Intoxicated.

STANDARD OF REVIEW

In reviewing a Federal Rule of Civil Procedure 12(b)(6) motion to dismiss, the court must assume the truth of all factual allegations and must construe them in the light most favorable to the non-moving party.¹ Legal conclusions, however, need not be taken as true “merely because they are cast in the form of factual allegations.”²

Dismissal under Federal Rule 12(b)(6) is appropriate when “it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.”³ Dismissal is warranted where the complaint lacks a cognizable legal theory or where the complaint presents a cognizable legal theory yet fails to plead essential facts under that theory.⁴

¹ See *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337-338 (9th Cir.1996).

² *Roberts v. Corrothers*, 812 F.2d 1173, 1177 (9th Cir.1987) (quoting *Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981)) (in parenthesis); see also *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55 (9th Cir. 1994).

³ *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001).

⁴ See *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 534 (9th Cir. 1984); *Doe I v. The Gap, Inc.*, No. CV-01-0031, 2001 WL 1842389 *1 (D.N.M. I. Nov. 26, 2001).

1 In spite of the deference the court is bound to pay to the plaintiff's allegations, it is not proper for
 2 the court to assume that "the [plaintiff] can prove facts which [he or she] has not alleged, or that
 3 the defendants have violated the ... laws in ways that have not been alleged."⁵ "[A] liberal
 4 interpretation of a civil rights complaint may not supply essential elements of the claim that were
 5 not initially pled. Vague and conclusory allegations of official participation in civil rights
 6 violations are not sufficient to withstand a motion to dismiss."⁶ While only requiring a short and
 7 plain statement of the claim, FRCP 8(a)(2) is not such a liberal requirement that purely conclusory
 8 statements can survive a motion to dismiss under Rule and 12(b)(6).⁷

OVERVIEW

11 Ms. Park's most recent suit is similar to the one previously dismissed by this court on
 12 November 16, 2007. In between the dismissal and the new filing, Ms. Park has discovered new
 13 and improved facts that, although heretofore unknown, allege a new defendant and a new cause
 14 of action. The general narrative, however, remains similar. Ms. Park seeks an entitlement that
 15 she has no legal interest in; the arrest of another individual.

17 Ms. Park was injured in a car accident by a driver she alleges was drunk. Subsequent to
 18 this accident, she alleges that the DPS and the DPS Defendants failed to provide her "police
 19 protection." Ms. Park brings ten causes of action against the various DPS Defendants that
 20 include: violation of equal protection under § 1983; violation of due process under §1983;
 21 violation of equal protection and due process under the NMI Constitution; conspiracy to violate
 22 civil rights under § 1985; conspiracy to obstruct justice under §1985; battery; intentional infliction
 23 of emotional distress; negligent infliction of emotional distress; and negligence. Although when
 24

26 ⁵ *Associated General Contractors of California, Inc. v. California State Council of*
 27 *Carpenters*, 459 U.S. 519, 526 (1983).

28 ⁶ *Ivey v. Bd of Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

28 ⁷ *Miller v. Continental Airlines*, 260 F.Supp.2d 931, 935 (N.D. Cal. 2003).

1 one takes the allegations as true they may indicate a disturbing fact pattern, they fail to rise to the
2 level of constitutional violations and thus fail to state a claim.

3 In the complaint's latest incarnation, Ms. Park's intent is clear; she wishes to receive
4 compensation for the DPS Defendants' failure to arrest an allegedly intoxicated Babauta. This is
5 clear not only from Ms. Park's alleged facts, but from her requested relief. Ms. Park now, as she
6 did before, seeks redress for the DPS Defendants' failure to arrest Babauta. This, of course, is
7 improper. Ms. Park's equal protection claim vis-à-vis police protection is not recognized by
8 courts in a traffic accident setting and, therefore, must be dismissed. Ms. Park's due process
9 claims are frivolous, barred by the U.S. Supreme Court and the law of the case. The claims
10 should be dismissed.

11 Moreover, the absence of a section 1983 deprivation of rights precludes a section 1985
12 conspiracy claim predicated on the same allegations; therefore, her conspiracy claims must be
13 dismissed. Further, because Ms. Park's claims are not based on any constitutional deprivation,
14 she lacks standing to bring the instant suit, and as none of her constitutional rights were violated,
15 or clearly established at any time, the DPS Defendants are entitled to qualified immunity.

16 Finally, Ms. Park's remaining state claims are frivolous, barred by the public duty doctrine
17 or should be dismissed for failure to state a claim. As Ms. Park, however, has failed to state any
18 federal cause of action, her remaining state law claims should be dismissed without prejudice
19 under 28 U.S.C. § 1367(c).

ARGUMENT

I. Ms. Park's Traffic Case Does Not Entitle Her To Police Protection. Even If It Did, She Received All The Protection She Was Entitled To

Federal law requires that “a litigant complaining of a violation of a constitutional right . . . utilize 42 U.S.C. § 1983.”⁸ Section 1983 requires that plaintiff prove that: “(1) a person acting under the color of state law committed the conduct at issue; and (2) the conduct deprived the Plaintiff of some right protected by the Constitution or laws of the United States.”⁹ In this case, Ms. Park alleges that she was deprived her right of “police protection.”

Ms. Park’s newest lawsuit alleges violations of equal protection arising out of the failure of the DPS Defendants to “protect” her by arresting or taking action on Defendant Babauta. This latest theory is fundamentally flawed due to a simple fact: police protection does not include investigation and arrest after a traffic accident. Even if it did, however, Ms. Park’s own pleadings make it clear that she received an investigation, just not an arrest. Again, Ms. Park’s entire claim boils down to an alleged failure to arrest, and this is improper.

A. Police Protection Cases Do Not Apply

In her suit's prior incarnation, Ms. Park argued that the police protection domestic abuse cases, *Estate of Macias v. Ihde*,¹⁰ *Navarro v. Block*,¹¹ and *Balisteri v. Pacific Police Dept.*,¹² established that “[t]here is a constitutional right . . . to have police services administered in a nondiscriminatory manner – a right that is violated when a state actor denies such protection to disfavored persons.”¹³ Quite simply these types of police protection cases do not apply to Ms.

⁸ *Azul-Pacifico, Inc. v. City of Los Angeles*, 973 F.2d 704, 705 (9th Cir. 1992).

⁹ *Seed v. Hudson*, No. CIV. A. 93-00081994, WL 229096 at *6 (D.N. Mar. 1. May 11, 1994) (citing *Leer v. Murphy*, 844 F.2d 628, 632-33 (9th Cir.1988)); see also *Daniels v. Williams*, 474 U.S. 327, 330-31 (1986) (holding that mere negligence cannot form the basis of a Fourteenth Amendment violation actionable under § 1983).

¹⁰ 219 F.3d 1018, 1028 (9th Cir. 2000).

¹¹ 72 F.3d 712, 715-17 (9th Cir. 1996).

¹² 901 F.2d 696, 701 (9th Cir. 1990).

¹³ *Estate of Macias*, 219 E 3d at 1028 (emphasis added).

1 Park's traffic case. This is made clear by *DeShaney v. Winnebago County Dept. of Social.*
2 *Serv's.*¹⁴

DeShaney held that the purpose of the constitution “was to protect the people from the State, not to ensure that the State protected them from each other[.]” Although DeShaney deals with due process, in footnote 3 the Supreme Court recognized that “[t]he State may not, of course, selectively deny its ***protective services*** to certain disfavored minorities without violating the Equal Protection Clause.”¹⁵ Protective services, as this Court noted in its dismissal order, do not apply to cases like Ms. Park’s.

10 Ms. Park's cause of action does not involve police protection. It is a traffic case, and
11
12 similar traffic cases demonstrate that Ms. Park has no claim. For example, in *Barnes v. Black*,¹⁶
13 Black caused a serious traffic accident when he collided into the passenger side of another vehicle
14 in which plaintiff was a passenger. Later, defendants Hamilton and Greagor, police officers,
15 responded to the accident. Although they drafted a traffic report form, defendants did not
16 investigate the accident scene completely, interview the plaintiff, or ticket Black. Plaintiff, much
17 like Ms. Park, brought an equal protection suit against the police officers. In examining the equal
18 protection claim, the court held that:

20 Even if [the Court] were to assume that petitioner had alleged that
21 he was treated differently in some way, it is unclear that petitioner
22 sustained an actual injury as a result of the alleged shortcomings of
23 respondents Hamilton and Greagor. A party must have sustained
24 some sort of injury as a result of the alleged wrongdoing to have
25 standing to bring a claim. *Lujan v. Defenders of Wildlife*,
504 U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992).
From petitioner's alleged facts, it appears that respondent Black has
been held at fault for the accident. It is not clear what additional
advantage petitioner would have gained had respondents Hamilton
and Greagor conducted a more thorough investigation or ticketed
respondent Black. Petitioner's complaint does not make out a claim

27 ||

¹⁴ 489 U.S. 189 (1989)

¹⁵ See *Walker v. Shepard*, 107 F.Supp.2d at 183.

¹⁶ 2004 WL 257105 (W.D. Wis.).

1 under the equal protection clause or indicate that he would have
 2 standing to bring such a claim. Therefore, he will be denied leave to
 3 proceed on this claim.¹⁷

4 In *Cravens v. City of La Marque, Tex.*,¹⁸ plaintiffs brought suit because a police officer
 5 failed to take Abner Cravens into custody for driving while intoxicated even though the officer,
 6 just like the DPS Defendants, allegedly had probable cause to do so. Plaintiffs' claims, just like
 7 Ms. Park's,¹⁹ rested on the assertion that “[b]ut for [Cravens's] status as an African-American,
 8 Officer Ontiveros would have properly arrested [him] in order to protect him.” The court found
 9 that this claim was unsupported and conclusory.²⁰ The court went on to find that there were no
 10 facts in the complaint to support an equal protection violation and that there were no facts
 11 supporting an inference that the decision not to arrest Cravens was based on race.²¹ Finally, the
 12 court noted that plaintiffs should not use an equal protection argument to circumvent the
 13 *DeShaney* principal that the Constitution doesn't guarantee protection from private actors.²²

14 *Barnes* and *Cravens* are nearly identical to Ms. Park's cause of action, and it is clear that
 15 her equal protection claims, like those in *Barnes* and *Cravens*, should be dismissed. Dismissal is
 16 also compelled when one notices that case law is legion with instances where police officers failed
 17 to arrest drunk individuals. Failing to arrest drunk drivers or failing to investigate, however, does
 18 not result in liability.²³ Even if, however, this Court were to find that “police protection” applies
 19

22 ¹⁷ *Barnes*, 2004 WL 257105 at 2

23 ¹⁸ 2006 WL 492805 (S.D. Tex.)

24 ¹⁹ See Plaintiff's FIRST AMENDED PETITION, ¶ 37.

25 ²⁰ *Barnes*, WL 492805 at 8.

26 ²¹ *Id.*

27 ²² *Id.*

28 ²³ Although CNMI courts have not ruled on the issue, the weight of US authority is that neither a law enforcement officer nor a governmental entity is liable to an individual injured by a drunk driver whom the government failed to restrain or arrest. The DPS Defendants note, however, that these cases are not quite analogous with Ms. Park's case-- the plaintiffs in these cases had the opportunity to argue causation and still lost. See, e.g., *Lehto v. City of Oxnard* 171 Cal.App.3d 285, 289-291, 217 Cal.Rptr. 450 (1985); *Leake v. Cain*, 720 P.2d 152 (Colo.1986); *Shore v. Town of Stonington*, 187 Conn. 147, 444 A.2d 1379

in cases involving traffic accidents, the point is moot because Ms. Park received the benefit of police protection.

B. Even If Police Protection Cases Apply, Ms. Park Received The Benefit Of Police Protection

Throughout her Original, First and Second Amended Complaints, Ms. Park unequivocally demonstrates that she received the benefits of police protection. For example, Ms. Park alleges that Defendant Manglona: (1) alerted DPS Central Command to the accident;²⁴ (2) requested an ambulance;²⁵ (3) checked on both cars;²⁶ and (4) conducted interviews of witnesses, drivers and passengers.²⁷ Further, Ms. Park claims that Defendants Macaranas and Langdon conducted interviews and directed traffic while agents of the CNMI attended to her medical needs.²⁸ Ms. Park was not ignored and Ms. Park was not treated differently than any other accident victim. To be clear, Ms. Park received all the benefits of police protection to which she was entitled. Her current equal protection claim, first styled as the DPS Defendants failure to “take action,” is not that she was denied protection but that she was denied an arrest and prosecution. Put plainly, Ms. Park is angry that Defendant Babuta was not arrested. She has no standing, however, to pursue such a claim.

(1982); *Everton v. Willard*, 468 So.2d 936 (Fla.1985); *Fusilier v. Russell*, 345 So.2d 543 (La.Ct.App.), cert. denied, 347 So.2d 261 (La.1977); *Schutte v. Sitton*, 729 S.W.2d 208 (Mo.Ct.App.1987); *Lindquist v. Moran*, 203 Mont. 268, 662 P.2d 281 (1983); *Crosby v. Town of Bethlehem*, 90 A.D.2d 134, 457 N.Y.S.2d 618 (1982); *Barratt v. Burlingham*, 492 A.2d 1219 (R.I.1985); *Bailey v. Forks*, 38 Wash.App. 656, 688 P.2d 526 (1984).

²⁴ Second Amended Complaint, ¶ 23.

25

Id.

²⁶ *Id.* at 24.

²⁷ *Id.* at 29.

28 *Id.* at 31.

1 For a very long time, courts have consistently expressed an unwillingness to intrude upon
 2 a police officer's discretion to decide when to effectuate an arrest.²⁹ In her Second Amended
 3 Complaint, indeed in all her complaints, Ms. Park conflates "arrest" with "police protection," and
 4 this is improper. For example, in *Lunini v. Grayeb*, the former lover of a city councilman brought
 5 an action against police officers alleging that they violated his equal protection rights by failing to
 6 arrest the councilman for domestic violence. In dismissing the claim the Seventh Circuit Court of
 7 Appeals held that:

8 on this record it appears highly doubtful that any alleged police
 9 misjudgments (if misjudgments there were) took on constitutional
 10 proportions. While we take pains to affirm the baseline principle
 11 that police support and protection must be afforded to all citizens on a
 12 non-discriminatory basis, we decline to take the unprecedented step
 13 of implying a general constitutional police *duty* to arrest certain
 14 individuals during a response to an isolated domestic incident.
 Such a ruling would threaten to turn every police house call
 into a potential federal constitutional lawsuit.³⁰

15 Ms. Park, like the plaintiff in *Lunini*, received the benefits of police protection. In *Lunini*,
 16 the police arrived,³¹ took statements,³² and declined to arrest anyone.³³ Ms. Park has alleged that
 17 the police arrived, took statements, and declined to arrest anyone. The Seventh Circuit declined
 18 to, in its words, "turn every police house call into a potential federal constitutional lawsuit." With
 19 her lawsuit, Ms. Park is asking the same thing, to turn every police traffic incident in the CNMI
 20

21
 22 ²⁹ See, e.g., *Lunini v. Grayeb*, 395 F.3d 761, 770 (7th Cir.2005) (finding that an officer's
 23 failure to arrest an individual involved "an ordinary exercise of police discretion" and thus it was
 24 "not obvious how the police officers' failure to arrest ... implicates [the plaintiff's] rights under the
 25 Equal Protection Clause in the first place"); *Ricketts v. City of Columbia*, 36 F.3d 775, 780 (8th
 26 Cir.1994) (noting that an "officer's discretion to determine when to arrest" is "a fundamental part
 27 of our criminal system"); *see also McCleskey v. Kemp*, 481 U.S. 279, 297, 107 S.Ct. 1756, 95
 28 L.Ed.2d 262 (1987) (noting, as a general matter, that "discretion is essential to the criminal justice
 process").

³⁰ *Lunini*, 395 F.3d at 772 (emphasis in original)(citations omitted).

³¹ *Id.*, at 764.

³² *Id.*, at 764-5.

³³ *Id.*, at 765.

1 into a federal constitutional lawsuit. This Court should decline the invitation.

2 Equal protection cases are founded on the troubled history of this nation. The equal
 3 protection clause in particular and the “Civil War Amendments” in general were designed to end
 4 the caste system designed by states that had been in rebellion.³⁴ The Equal Protection clause
 5 protects people from police action or inaction, but is reserved for serious invasions of individual
 6 rights. Ms. Park utterly fails to plead that she did not receive police protection, and instead
 7 demonstrates that she did not receive the “benefit” of having somebody else arrested. This, of
 8 course, she is not entitled to as demonstrated by legions of case law. Her Equal Protection claims
 9 should be dismissed.

10

11 **II. This Court Dismissed Ms. Park’s Due Process Claims Previously. Her Inclusion
 12 Of The Same Claims Amounts To A Frivolous Pleading.**

13 Ms. Park’s due process claims are identical to the claims previously dismissed by this
 14 Court or rest upon the same legal theory that was previously rejected by this Court. Again, even
 15 assuming that every allegation contained in Plaintiff’s Second Amended Complaint is true, there
 16 can be no cause of action against the DPS Defendants for violations of due process either under
 17 the U.S. or NMI Constitutions.³⁵

18 At the very least, section 1983 demands that Ms. Park plead that the DPS Defendants
 19 deprived her of “some right protected by the Constitution or laws of the United States.”³⁶ When a
 20 State has not explicitly created a “personal entitlement” to some benefit, there is no property
 21 interest and thus no procedural due process violation.³⁷ The legal question, then, is whether Ms.
 22 Park had a recognized property interest in, that is, legal entitlement to, or personal interest in, an

23
 24
 25
 26
 27
 28

³⁴ *Slaughter-House Cases*, 83 U.S. 36, 70 (1876).

³⁵ See *Commonwealth v. Bergonia*, 3 NMI 22 (1992) (“We will apply Article I, § 5 using the same analysis as for the Fourteenth Amendment.”).

³⁶ *Seed*, 1994 WL 229096 at *6 (citing *Leer*, 844 F.2d at 632-33).

³⁷ See *Town of Castle Rock, Colorado v. Gonzales*, 545 U.S. 748 (2005).

1 outcome guaranteed in the Victim's Bill of Rights or the myriad statutes and regulations she cites.
 2 As there is no "precisely defined means of enforcement"³⁸ contained in any statute or regulation
 3 cited by Ms. Park, the Supreme Court in *Castle Rock* and this Court have provided a clear
 4 answer: "no."³⁹

5 As the parties know, in its nine page order dismissing Ms. Park's claims, this Court
 6 dismissed Ms. Park's due process claims on legal grounds rather than the factual grounds. In its
 7 analysis, the Court found that Ms. Park's due process claim regarding the CNMI Victims' Bill of
 8 Rights misconstrued the law.⁴⁰ Ms. Park's new complaint, as it pertains to due process, is nothing
 9 more than an attempt at a "do over" that ignores the "law of the case" doctrine.
 10

11 "Under the 'law of the case' doctrine, a court is ordinarily precluded from reexamining an
 12 issue previously decided by the same court, or a higher court, in the same case."⁴¹ For the law of
 13 the case doctrine to apply, "the issue in question must have been 'decided explicitly or by
 14 necessary implication in [the] previous disposition.'"⁴² Because Ms. Park made the same Due
 15 Process/Victims' Bill of Rights allegations in a consecutive series of pleadings, this Court should
 16

18 ³⁸ Order Granting Defendants' Motion to Dismiss; Civil Action No. 07-00021.

19 ³⁹ *Castle Rock v. Gonzales* bars Ms. Park's claims. In *Castle Rock v. Gonzales*, Ms.
 20 Gonzales filed a section 1983 action after her estranged husband abducted and murdered their
 21 three children. Ms. Gonzales possessed a restraining order that included a preprinted "NOTICE
 22 TO LAW ENFORCEMENT OFFICIALS," which ordered the officials in part to "use every
 23 reasonable means to enforce this restraining order." The Court held that Gonzales did not have a
 24 legitimate property interest in the enforcement, and therefore the Town did not violate the Due
 25 Process Clause when police officers failed to enforce the order. Despite the forceful language of
 26 the notice to law enforcement officials, the Court reasoned that the state of Colorado had not
 27 created a clear mandate of police action, noting that it is "**common sense that all police officers
 28 must use some discretion in deciding when and where to enforce city ordinances.**" Consequently,
 29 Gonzales had no constitutionally protected property interest in the enforcement of the restraining
 30 order, and the Town did not violate her procedural due process rights. This Court has come to the same conclusion regarding Ms. Park's claims.

31 ⁴⁰ Order Granting Defendants' Motion to Dismiss; Civil Action No. 07-00021, p. 4.

32 ⁴¹ *Richardson v. United States*, 841 F.2d 993, 996 (9th Cir. 1988) (citations omitted).

33 ⁴² *United States v. Lummi Indian Tribe*, 235 F.3d 443, 452 (9th Cir. 2000).

1 dismiss the claim in accordance with the previous decision. Ms. Park, however, didn't stop at the
 2 CNMI Victims' Bill of Rights. Ms. Park now claims a constitutionally protected interest in
 3 various CNMI laws and police regulations.

4 Ms. Park claims that she has "a liberty and property interest" in the following statutes and
 5 regulations: 1 CMC § 2504; 6 CMC § 3202; NMIAC § 150-10-710; NMIAC § 150-10-745;
 6 NMIAC § 150-10-760; NMIAC § 150-10-765; NMIAC § 150-10-845; and NMIAC § 150-10-
 7 850; NMIAC § 150-10-850. Ms. Park's claims regarding these statutes and regulations
 8 completely ignore this Court's dismissal order. Just as with the CNMI Victims' Bill of Rights,
 9 Ms. Park has absolutely no "legitimate claim of entitlement to [any property interest]"⁴³ in these
 10 statutes and regulations. Specifically, as this Court held, Ms. Park lacks any "precisely defined
 11 means of enforcement" with these statutes and regulations. This is so because these statutes and
 12 regulations are either organizational, criminal, or employment based.

13 Even if Ms. Park could point to a "precisely defined means of enforcement[,"] and she
 14 cannot, she would not have a property interest because of the nature of the statutes. For example,
 15 1 CMC § 2504 is an organizational statute that describes the duties of the Department of Public
 16 Safety. It is a laundry list of responsibilities and public policy goals the legislature has for the
 17 Department. Ms. Park claims, apparently, that she has a liberty and property interest in this
 18 statute. The statute, however, contains the *responsibilities of the Department* not individual
 19 responsibilities for Defendants Manglona, Langdon, and Macaranas. Ms. Park, however, seeks
 20 relief from *individual defendants* under a statute that does not charge them with any duties. This
 21 is, of course, absurd. To begin with, the duties contained in 1 CMC § 2504 are tasked to the
 22 Department, not individuals in the Department. Therefore, even if this statute provided a
 23
 24
 25
 26
 27

28 ⁴³ *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972).

1 property or liberty interest to Ms. Park, and it doesn't, the action would have to be filed against
 2 the Department, not an individual. Filing against the Department, however, is impossible as it is
 3 not a person for the purpose of a section 1983 suit.⁴⁴ Ms. Park has no property or liberty interest
 4 in 1 CMC § 2504.

5 Ms. Park's attempt to claim a property and liberty interest in 6 CMC § 3202 is even more
 6 frivolous. Title 6, Division 3, Chapter 2 of the Commonwealth Code is entitled "Offenses against
 7 the Commonwealth." 6 CMC § 3202, entitled "Misconduct in Public Office," is a criminal statute
 8 that provides, upon criminal conviction, up to one year in jail and/or a fine of up to \$1000.
 9 Clearly, criminal prosecution is the remedy available in this statute, not a private right of action.
 10 This statute, like all the other statutes Ms. Park cites, does not provide her with a "precisely
 11 defined means of enforcement."

12 The remaining regulations Ms. Park claims to have a liberty or property interest in are all,
 13 without exception, employment rules and regulations of the Department of Public Safety. The
 14 only individuals who have any property interest in these regulations are the employees of the
 15 Department, not general members of the public. This is clear from the fact that the regulations
 16 also contain provisions for: a code of ethics;⁴⁵ the definition of an employee;⁴⁶ an oath of office;⁴⁷
 17 and the manner of dress on duty.⁴⁸ Again, none of the provisions cited in the Second Amended
 18 Complaint contain the requisite enforcement mechanism required by this Court and the U.S.
 19 Supreme Court.⁴⁹ Moreover, if Ms. Park is correct and these regulations do create property and
 20

21
 22
 23
 24
 25 ⁴⁴ *De Nieve v. Reyes*, 966 F.2d 480 (9th Cir.1992)

26 ⁴⁵ NMIAC § 150-10-001

27 ⁴⁶ NMIAC § 150-10-005(a)

28 ⁴⁷ NMIAC § 150-10-010

29 ⁴⁸ NMIAC § 150-10-310

30 ⁴⁹ *See Town of Castle Rock v. Gonzales*, 545 U.S. 748 (2005); Order Granting Defendants'
 31 Motion to Dismiss; Civil Action No. 07-00021.

1 liberty interests for the general public, it is conceivable that this Court will see a surge in due
 2 process claims regarding citizens seeking damages due to officers failing to keep their uniforms
 3 “neat, clean and well pressed[.]”⁵⁰

4

5 **III. Ms. Park Has No Valid Equal Protection or Due Process Claims. Therefore, Ms.**
Park lacks standing to bring this suit.

6 Ms. Park’s suit should be dismissed because she has not suffered “an invasion of a
 7 concrete and particularized legally protected interest.”⁵¹ All Ms. Park has alleged in her suit is a
 8 generalized grievance: the DPS Defendants failed to arrest Babauta. Ms. Park attempts to mask
 9 this request by calling it “police protection,” but as demonstrated in her own pleadings, Ms. Park
 10 received police protection, just not an arrest. Moreover, as demonstrated above, Ms. Park has no
 11 individual interest in the prosecution of another. She has only a general interest, just as much as
 12 any member of the general public, in seeing Babauta arrested. The Supreme Court has repeatedly
 13 refused to recognize a generalized grievance against allegedly illegal government conduct as
 14 sufficient to confer standing.⁵² The Supreme Court requires that even if a government actor
 15 discriminates on the basis of race, the resulting injury “accords a basis for standing only to those
 16 persons who are personally denied equal treatment.”⁵³ Ms. Park hasn’t alleged that she was
 17 denied the protective services of the police regarding accident investigation, witness interviews,
 18 medical attention and emergency services, she has only alleged that Babauta was not arrested. As
 19 discussed above, however, the failure to arrest an individual does not implicate the due process
 20 clause in either a substantive or procedural way.⁵⁴ For these reasons, Ms. Park’s suit should be
 21 dismissed because she has not suffered “an invasion of a concrete and particularized legally
 22

23

24

25

⁵⁰ NMIAC § 150-10-305

⁵¹ *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

⁵² *United States v. Hays*, 515 U.S. 737, 743 (1995).

⁵³ *Allen v. Wright*, 468 U.S. 737, 755 (1984) (internal quotation marks omitted).

⁵⁴ See *Town of Castle Rock*, 545 U.S., at 768.

1 protected interest.”⁵⁵

2 **IV. Without an Underlying §1983 Violation, Plaintiff May Not Allege a §1985 Action**
 3 **on the Same Pled Facts.**

4 As demonstrated above, police protection cases don’t extend to Ms. Park’s claims.

5 Even if they did however, she received all the police protection to which she was entitled.

6 Further, Ms. Park has no right to have anyone arrested⁵⁶ as this is a purely discretionary
 7 act.⁵⁷ Ms. Park has failed to state an equal protection claim and she has failed to state, either
 8 procedurally or substantively, a due process claim. The absence of a section 1983
 9 deprivation of rights precludes a section 1985 conspiracy claim predicated on the same
 10 allegations.⁵⁸ The Ninth Circuit precludes plaintiffs from bringing conspiracy claims for
 11 violating equal protection and due process when there is no underlying violation of equal
 12 protection and due process.⁵⁹ As demonstrated above, Ms. Park cannot show that the DPS
 13 Defendants’ acts “deprived [her] of some right protected by the Constitution or laws of the
 14 United States.”⁶⁰ Further, even if the Ninth Circuit allowed Ms. Park to state a claim for
 15 conspiracy, and it does not, she has failed to do so.

16 When pleading a conspiracy a “plaintiff must make some showing of an agreement or
 17 a meeting of the minds on the part of defendants to violate his constitutional rights.”⁶¹
 18 Conspiracy allegations must be supported by material facts and not merely conclusory
 19

20

 21⁵⁵ *Lujan v. Defenders of Wildlife*, 504 U.S. at 560.

22⁵⁶ *See Town of Castle Rock*, 545 U.S., at 768.

23⁵⁷ *Ricketts*, 36 F.3d at 780 (noting that an “officer’s discretion to determine when to arrest” is
 24 “a fundamental part of our criminal system”)

25⁵⁸ *Cassettari v. Nevada County, Cal.*, 824 F.2d 735, 739 (9th Cir.1987) (citing *Dooley v.*
 26 *Reiss*, 736 F.2d 1392, 1395 (9th Cir.), *cert. denied*, 469 U.S. 1038, 105 S.Ct. 518, 83 L.Ed.2d
 27 407 (1984)).

28⁵⁹ *See, e.g., Id.*

⁶⁰ *Seed*, 1994 WL 229096 at *6 (citing *Leer*, 844 F.2d at 632-33).

⁶¹ *Woodrum v. Woodward County*, 866 F.2d 1121, 1126 (9th Cir. 19889) (citing *Fonda v.*
 29 *Gray*, 707 F.2d 435 (9th Cir. 1983))

1 statements.⁶² “Vague and conclusory allegations are not sufficient to support a claim for
 2 civil rights violations based on conspiracy.”⁶³ This heightened pleading standard no longer
 3 applies to civil rights actions in general,⁶⁴ but it does still apply to conspiracy claims.⁶⁵

4 The heightened pleading standard requires that a conspiracy claim must be pled with
 5 particularity as to which defendants conspired, how they conspired and how the conspiracy
 6 led to a deprivation of plaintiff’s constitutional rights.⁶⁶ Ms. Park’s pleadings fail to meet
 7 this standard. All Ms. Park has pled are conclusory facts. For example, Ms. Park alleges
 8 that: the DPS Defendants formed a conspiracy;⁶⁷ all defendants conspired to destroy
 9 evidence;⁶⁸ and obstruct justice.⁶⁹ These are all conclusory allegations which assume the
 10 ultimate issue. Further, Ms. Park has only made a conclusory allegation that the alleged acts
 11 were race related but provides no facts. Moreover, since she has no personal right to see
 12 anyone prosecuted, she was no more injured by this “obstruction of justice” than any other
 13 individual on Saipan.

14 **V. The Facts Alleged Do Not Show a Violation of Constitutional Rights. Therefore,
 15 the DPS Defendants are entitled to Qualified Immunity**

16 Qualified immunity is “an entitlement not to stand trial or face the other burdens of
 17 litigation.”⁷⁰ The privilege is “an *immunity from suit* rather than a mere defense to liability;
 18 and like an absolute immunity, it is effectively lost if a case is erroneously permitted to go to
 19 trial.” As a result, “[the U.S. Supreme Court has] repeatedly . . . stressed the importance of
 20

21 ⁶² *Lockary v. Dayfetz*, 587 F.Supp. 631 (N.D. Cal. 1984).

22 ⁶³ *Ivey*, 673 F.2d at 268.

23 ⁶⁴ *see Galbraith v. County of Santa Calara*, 307 F.3d 1119, 1126 (9th Cir. 2002)

24 ⁶⁵ *Olsen v. Idaho State Bd. of Medicine*, 363 F.3d 916, 929 (9th Cir.2004).

25 ⁶⁶ *See Harris v. Roderick*, 126 F.3d 1189, 1196 (9th Cir. 1997).

26 ⁶⁷ *See Second Amended Petition*, ¶ 46.

27 ⁶⁸ *See Second Amended Petition*, ¶ 61.

28 ⁶⁹ *See Second Amended Petition*, ¶ 61.

29 ⁷⁰ *Mitchell v. Forsyth*, 472 U.S. 511, 526, 105 S.Ct. 2806, 86 L.Ed.2d 411 (1985).

1 resolving immunity questions at the earliest possible stage in litigation.”⁷¹ The Supreme
 2 Court has held that the denial of a claim of qualified immunity is immediately appealable
 3 under the collateral order doctrine.⁷²

4 A court asked to rule on qualified immunity must consider this threshold question:
 5 “Taken in the light most favorable to the party asserting the injury, do the facts alleged show
 6 the officer's conduct violated a constitutional right?”⁷³ As demonstrated frequently in earlier
 7 sections of the brief, Ms. Park has failed to allege she was denied equal protection of any
 8 right protected by the U.S. Constitution, and the U.S. Supreme Court has concluded that
 9 individuals have no protected interest in having a third party arrested. Therefore, as the
 10 Plaintiff's own alleged facts fail to show the DPS Defendants violated any of Ms. Park's
 11 constitutional rights, the DPS Defendants are immune and the suit must be dismissed.
 12

13

14 **VI. 28 U.S.C. 1347(c) Allows Dismissal of Plaintiff's Remaining State Claims.
 15 Therefore, Ms. Park's remaining state claims should be dismissed without
 16 prejudice.**

17 Ms. Park's state law claims should be dismissed outright as they are alleged
 18 constitutional violations, which fail to state a claim, or they are negligence actions which are
 19 barred by the public duty doctrine. 28 U.S.C. § 1367(c), however, provides that district
 20 courts may decline to exercise supplemental jurisdiction if “(1) the claim raises a novel or
 21 complex issue of State law, (2) the claim substantially predominates over the claim or claims
 22 over which the district court has original jurisdiction, (3) the district court has dismissed all
 23 claims over which it has original jurisdiction, or (4) in exceptional circumstances, there are
 24 other compelling reasons for declining jurisdiction.” In the absence of federal question or
 25

26

⁷¹ *Hunter v. Bryant*, 502 U.S. 224, 227, 112 S.Ct. 534, 116 L.Ed.2d 589 (1991) (*per curiam*).

27 ⁷² *Mitchell*, 472 U.S. at 526.

28 ⁷³ *Siegert v. Gilley*, 500 U.S. 226, 232, 111 S.Ct. 1789, 114 L.Ed.2d 277 (1991).

1 diversity jurisdiction, it is within the Court's discretion to decline to exercise supplemental
2 jurisdiction and to dismiss Ms. Park's remaining claims based upon local law without
3 prejudice pursuant to 28 U.S.C. § 1337(c).⁷⁴ As discussed above, Ms. Park's claims express
4 her disappointment and unhappiness that DPS officers failed to arrest a drunk driver. Ms.
5 Park's disappointment, however, does not constitute a section 1983 action. Even if this
6 Court were to find that there is any question that Ms. Park has any valid local law claims,
7 these claims would involve novel questions of local law. Accordingly, the first three, if not
8 all four factors contained in the statute would militate in favor of dismissing Ms. Park's local
9 law claims without prejudice. This would allow these local law questions, which
10 predominate, to be decided in the first instance by the local courts.
11
12

CONCLUSION

14 WHEREFORE, based upon the foregoing, this honorable Court should grant, in whole or
15 in part, DPS Defendants' Motion to Dismiss and that they be awarded attorneys' fees.
16
17
18
19
20
21
22
23
24
25
26
27

⁷⁴ See *Dyack v. Northern Mariana Islands*, 317 F.3d 1030, 1037-38 (9th Cir. 2003); *Bryan v. Adventist Health Sys./West*, 289 F.3d 1162, 1169 (9th Cir. 2002).

Respectfully submitted
Thursday, January 31, 2008
OFFICE OF THE ATTORNEY GENERAL

/S/

CERTIFICATE OF SERVICE

I certify that a copy of Defendants' Motion to Dismiss was served on George Hasselback, who is the attorney in charge for plaintiff, Ms. Park, and whose address is PO Box 501969, Saipan, MP 96950, (670) 234-5684, by electronic filing on Thursday, January 31, 2008.

/s/ _____